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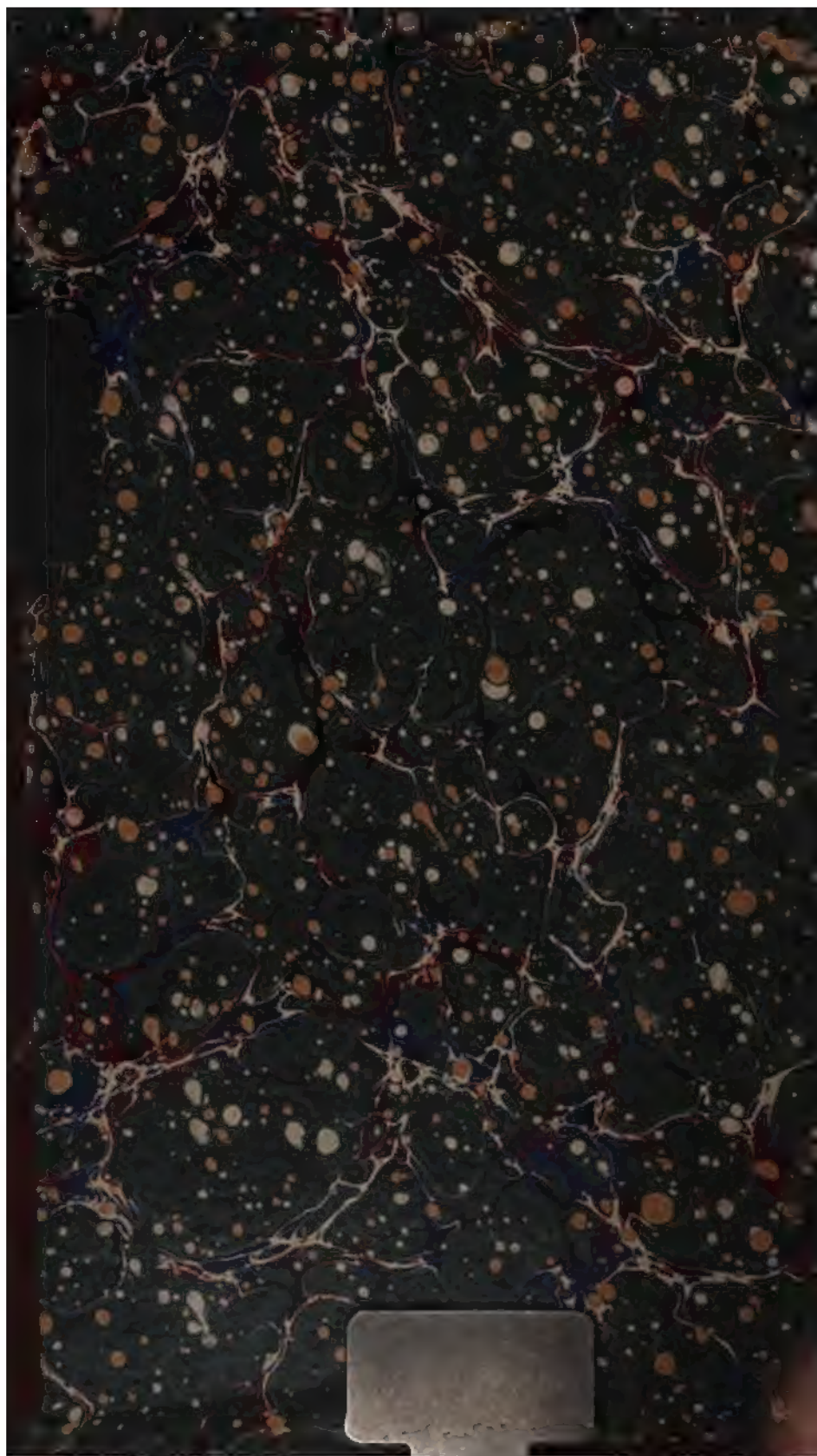
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(Lodge's edition).  
. 63.

The fundamental source of all your errors is a total ignorance of the natural right of man. It is once to become acquainted with these, and to think that all men are not, by nature, equal. And in a passage which contains as profound philosophy he wrote:

The sacred rights of mankind are not to be secured by parchment or musty records. They are to be secured by the whole volume of human nature, by the

Such utterances seem to answer the question: Did Hamilton begin public life with these sentiments are those of Otis and I to draw from them false inferences. cratic ring, but there is little that is new in them. They express universal rational and cratic principles. Most of them are uttered. Moreover, the circumstances make it clear that when Hamilton spoke he had in mind communities rather than individuals. The quarrel was not with the aristocracy of Britain, but with her policy. The question of the colonies in America had individually to do with the right of taxation was then the question, and this question is radically distinct from the question of form of government which he had in mind. To this latter question, the answer involved a decision for or against decentralization. That Hamilton at this time had given no answer had done so, it could have been only a question of time. It seems not unreasonable to assume that Hamilton's ideas in so far as they sustained the right of self-taxation, and, in possession of the right of self-taxation, but he did not consciously. We know that certain strongly marked ideas inclined him from the beginning not only for the right of self-taxation but also against resistance to Great

<sup>3</sup> A Full Vindication, Works I, 83.

entitled *The Farmer Refuted*. Both were widely read and had a marked influence. The author, although probably under eighteen when he wrote the *Vindication*, was already a statesman. For grasp of principles, mastery of facts, clearness of statement and cogency of reasoning, these papers deserve high rank in the political literature of the Revolution. What, at that time, were the politics of this youth, who, up to 1772, had been an inhabitant of the West Indies? Had he, within the short space of two years, become an American? In arguing against the claim that Parliament had an unlimited right to legislate for the colonies, he wrote :

All men have one common original : they participate in one common nature, and consequently have one common right. No reason can be advanced why one man should exercise any power or pre-eminence over his fellow-creatures more than another, unless they have voluntarily vested him with it. Since, then, Americans have not, by any act of theirs, empowered the British Parliament to make laws for them, it follows they can have no just authority to do it.<sup>1</sup>

It is not (he continued) the burden of a particular tax which the colonies resent :

The Parliament claims a right to tax us in all cases whatsoever ; its late acts are in virtue of that claim. How ridiculous, then, it is to affirm that we are quarrelling for the trifling sum of three pence a pound on tea, when it is evidently the principle against which we contend.<sup>2</sup>

He even went so far as to claim that in the last resort the duties of the colonists were determined by their interests :

As to the degrees and modifications of that subordination which is due to the parent state, these must depend upon other things besides the mere act of emigration. . . . These must be ascertained by the spirit of the constitution of the mother country, by the compacts for the purpose of colonizing, and more especially by the law of nature, and that *supreme law* of every society — *its own happiness*.<sup>3</sup>

He frequently appealed to the natural rights of man. He tells his Tory opponents :

<sup>1</sup> A Full Vindication, Works I, 6 (Lodge's edition).

<sup>2</sup> *Ibid.* I, 7.

<sup>3</sup> *Ibid.* I, 63.



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mental defect," he wrote, "is a want  
This was due, in his opinion, to three

An excess of the spirit of liberty, which  
states show a jealousy of all power not in  
jealousy has led them to exercise a right of  
the measures recommended by Congress,  
their own opinions of their propriety or nec  
gress, of their own powers, by which they  
cise in their resolutions, constantly makin  
till they have scarcely left themselves the s  
sufficient means at their disposal to answer

To the plea that Congress "had no  
granted them," he replies :

The manner in which Congress was appo  
public good required that they should ha  
vested with full power to *preserve the repu*  
done many of the highest acts of sovereign  
fully submitted to : the declaration of inde  
war. . . . All these implications of a com  
disputed, and ought to have been a stand  
administration. Undefined powers are d  
only by the object for which they were giv  
independence and freedom of America.<sup>1</sup>

Of the Confederation, then under d  
established, he says :

It is neither fit for war nor peace. Th  
sovereignty in each state over its internal  
powers given to Congress, and make our u

His enumeration of the powers which  
gress summarizes quite fairly the po  
the interpretation of Hamilton and t  
actually conferred on the general gov  
tion of 1787 :

Congress should have complete sovereign  
peace, trade, finance and to the manage  
right of declaring war ; of raising armi  
directing their motions in every respect ; o

<sup>1</sup> Works I, 203.

<sup>2</sup> *Ibid.* I, 204.

ment of *The Farmer Refuted*, Hamilton significantly declares that he knows his opinions have not been influenced by prejudice, —

because he remembers the time when he had strong prejudices on the side he now opposes. His change of sentiment (he firmly believes) proceeded from the superior force of the arguments in favor of the American claims.<sup>1</sup>

Perhaps the most serious blemish of these early writings is an appeal to anti-papist feeling. But this was “a fault of youth”; throughout most of his later writings, and particularly in those which belong to his best period, from 1780 to 1797, Hamilton seeks to allay rather than to excite prejudice. Aside from their use in promoting resistance and preparing for revolution, and their significance as a revelation of character and talent, the chief interest of these papers consists in the fact that in every line they present the writer as in full sympathy with the people of his adopted country. This harmony, however, did not rest upon a durable basis; what made it for a short period possible, was a highly exceptional condition of public affairs in which those political interests wherein Hamilton and the people thought alike, overshadowed those wherein they could never agree. In 1774 the spirit of nationalism was dominant; local and particular interests were, for the time being, forgotten. But American particularism was not dead; it only slept; it was sure to awaken soon, and then the variance between Hamilton and the people must begin.

During the struggle for independence, Hamilton, although occupied with important military duties, found time to enter upon the task to which his life thereafter was to be devoted and (we may truly say) sacrificed — the task, namely, of giving to the United States a national government, and therewith a national character and policy. In a letter dated September 3, 1780, to James Duane, a member of the Continental Congress, Hamilton gave his views “of the defects of our present system, and the changes necessary to save us from ruin.” “The funda-

<sup>1</sup> Works I, 53.

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mental defect. He writes: "It is a want of power."  
This was due, in his opinion, to three causes:

An excess of the spirit of liberty which the  
states show a jealousy of all power and a distrust of  
jealousy has led them to exercise a right of vetoing  
the measures recommended by a national council and  
their own by-laws of their owners or members  
gress of their own powers in which they have  
cise in their resolutions constantly making them  
all they have suffered yet themselves in shadow  
sufficient means at their disposal to answer the call.  
To the plea that Congress had power in-  
granted them, he replied:

The manner in which Congress was organized was  
public good required that they should have been  
vested with full power to preserve the national peace  
done many of the highest acts of sovereignty which  
fully submitted to the resolution of independence  
war. . . . All these responsibilities of a commonwealth  
disputed, and ought to have been a national or  
administration. Therefore power was conferred  
only by the object for which they were given, and  
independence and freedom of commerce."

Of the Confederation, Hamilton writes: "It was  
established by law."

It is better for the war than peace. The great  
sovereignty in each state was a virtual power to  
powers given to Congress and made the nation feel

His enumeration of the powers which Congress  
gress summarized by saying the powers of  
the interpretation of them then and the early  
actually conferred on the general government  
tion of 1787:

Congress should have complete sovereignty in  
peace, trade, finance and in the management of  
right of declaring war; of raising armies and  
directing their actions in every respect, of con-

the same with them ; of building fortifications, arsenals, magazines, *etc.*, *etc.* ; of making peace on such conditions as they think proper ; of regulating trade, determining with what countries it shall be carried on ; granting indulgences ; laying prohibitions on all the articles of export or import ; imposing duties ; granting bounties and premiums for raising, exporting or importing, and applying to their own use the product of these duties — only giving credit to the states on whom they are raised in the general account of revenues and expenses ; instituting admiralty courts, *etc.* ; of coining money ; establishing banks on such terms and with such privileges as they think proper ; appropriating funds, and doing whatever else relates to the operations of finance ; transacting every thing with foreign nations ; making alliances, offensive and defensive, treaties of commerce, *etc.*, *etc.*<sup>1</sup>

He favored a more efficient executive, with the following secretaryships : Foreign Affairs, War, Marine, Finance, Trade.<sup>2</sup> A paragraph, prophetic of one of the greatest of its author's achievements, advocates the establishment of a national bank. During the years 1781 and 1782 the substance of this letter was given to the public in a series of essays, six in number, which received the name of *The Continentalist*.

The letter to Duane makes it clear that, in 1780, the views of the writer had already come to differ widely from those generally held by the American people. It is true that he and they were moving in the same general direction, that is, towards national unity and national government, — but not at an equal pace. He was advancing rapidly, constantly, and with confident step ; they slowly, reluctantly, with many misgivings and backward turnings. It is certainly remarkable that at the age of twenty-three, and before the adoption of our first constitution, namely the Articles of Confederation, Hamilton should have detected and exposed its inadequacy, should have foretold its failure ; and that he should have thought out, in its most important features, that second and durable constitution which went into operation nine years later. In 1780 Hamilton, although far ahead, was still in the same pathway with the people.

Even before the war closed Hamilton had come to regard the states as a highly inconvenient and mischievous element of the

<sup>1</sup> Works I, 214.

<sup>2</sup> *Ibid.* I, 215.

political system. He now entered on a course of experiences which confirmed this view, and, at the same time, caused him to distrust and dislike democracy. In 1782 he became a member of Congress, and struggled manfully to commit that body to a national policy. But his efforts were in vain. Now that the pressure of war was removed the reaction towards state rights carried everything before it. His colleagues admired, but would not support him. In the states the democratic element began to get control and to abuse its power flagrantly.

In 1784, while a private citizen engaged in the practice of the law, Hamilton made a heroic stand against the persecution of the Tories. The *Letters from Phocion*, which this persecution called forth from him, after dwelling upon the inhumanity, the unlawfulness and the impolicy of persecution, direct attention in closing to its influence upon the future of the state :

Early habits [he wrote] give a lasting bias to the temper and character. Our governments, hitherto, have no habits. How important to the happiness, not of America alone, but of mankind, that they should acquire good ones !

If we set out with justice, moderation, liberality and a scrupulous regard to the constitution, the government will acquire a spirit and tone productive of permanent blessings to the community. If, on the contrary, the public councils are guided by humor, passion and prejudice, . . . the future spirit of government will be feeble, distracted, and arbitrary. The rights of the subject will be the sport of every party vicissitude. . . . With the greatest advantages for promoting it that ever a people had, we shall have betrayed the cause of human nature.<sup>1</sup>

This solicitude for the future and for the world ; for the permanent effects of a particular policy upon the character of the people and the government, and thereby upon the welfare of mankind, — is a strongly marked trait of Hamilton and proves the high quality of his statesmanship. Moreover the stand he took not only in these letters but in defending in a celebrated case the legal rights of the hated loyalists, showed that Hamilton did not share the prejudices of the multitude and had the courage to stand alone, if need be, against the multitude. But these considerations do not fully explain his course. His tol-

<sup>1</sup> Works III, 504.

erant attitude towards the Tories was in part due to the circumstance that he, more justly than most, could understand, and even respect, the motives which had kept them steadfast in their loyalty to Great Britain. This circumstance points to a radical difference between Hamilton and other Americans. His nationalism was as strong and fervent as theirs; but it rested on another and in some respects a broader basis.

Meanwhile the Confederation was being tested. It is needless to recount here the humiliating events of the period from 1780 to 1787. At its close most citizens who had learned to think and feel "continentally" agreed with Hamilton that the Confederation was "neither fit for war nor peace." Disgrace and danger at last made the people ready to consider the propriety of strengthening the federal government. In the events which led to the Convention of 1787, Hamilton had a conspicuous and useful part. In the Convention itself he presented and in a powerful speech advocated an aristocratic and highly centralized form of government. Let us look at some of its features: tenure of office for both the president and the senators of the United States was to be for life. They were to be chosen as now by electors, but these electors were themselves to be chosen by voters having a considerable property qualification. To the president was given an unqualified veto; that is, the president could prevent any measure from becoming law; in the Senate the exclusive right to declare war was vested. The national government was to appoint the governors of the states, and these, like the president, were to have an unqualified veto on state legislation.<sup>1</sup>

<sup>1</sup> *Vide* Works I, 334. The grounds of Hamilton's views on government are indicated by the following quotations from the brief of his speech:

"Society naturally divides itself into two political divisions—the *few* and the *many*, who have distinct interests.

If government [is] in the hands of the *few*, they will tyrannize over the many.

If [in] the hands of the many, they will tyrannize over the few. It ought to be in the hands of both; and they should be separated.

This separation must be permanent.

Representation alone will not do.

Demagogues will generally prevail.

And if separated, they will need a mutual check.

So far as Hamilton took part in the debates of the Convention, his views were in accord with the principles embodied in this plan of government. His first impression of the constitution, and his forecast of the course of events in case of its adoption, may be gathered from a paper written within a few days after the close of the Convention :

If the government [he wrote] be adopted, it is probable General Washington will be the president of the United States. This will ensure a wise choice of men to administer the government and a good administration. A good administration will conciliate the confidence and affection of the people, and perhaps enable the government to acquire more consistency than the proposed constitution seems to promise for so great a country. It may then triumph altogether over the state governments, and reduce them to an entire subordination, dividing the larger states into smaller districts. The *organs* of the general government may also acquire additional strength.

If this should not be the case in the course of a few years, it is probable that the contests about the boundaries of power between the particular governments and the general government, and the *momentum* of the larger states in such contests, will produce a dissolution of the Union. This, after all, seems to be the most likely result.<sup>1</sup>

In 1780 Hamilton had occupied a position which the people were scarcely able to attain eight years later. In 1787 he occupied a position towards which the people were not progressing — from which indeed their line of advance was steadily deviating. From this time onward the gulf between public opinion and his opinions was to widen constantly.

This check is a monarch.

Each principle ought to exist in full force, or it will not answer its end.

The democracy must be derived immediately from the people.

The aristocracy ought to be entirely separated; their power should be permanent. . . .

They should be so circumstanced that they can have no interest in a change — as to have an effectual weight in the constitution." — *Ibid.* I, 357.

"Gentlemen say we need to be rescued from the democracy. But what [are] the means proposed ?

A democratic Assembly is to be checked by a democratic Senate, and both these by a democratic chief magistrate.

The end will not be answered — the means will not be equal to the object.

It will, therefore, be feeble and inefficient." — *Ibid.* I, 359.

<sup>1</sup> Works I, 402.

But in 1787 there was only one course which nationalists could pursue, and that was to support the proposed constitution. This Hamilton did in a way which, had he done nothing else for his country, would have made him one of the most famous and deserving of Americans. He wrote the greater portion of *The Federalist*, — the unique excellence of which is universally conceded, — and, by dint of courage and argument, he extorted a vote to ratify from the unfriendly convention of New York. His predictions respecting the presidency came true. Washington made a “wise choice of men to administer the government.” As secretary of the Treasury Hamilton entered upon the great work of his life. Here for the first and only time in his career, the situation favored the freest exercise of his highest powers. Hitherto, with the single exception of his first youthful efforts, he had always been hampered by wide differences of view between himself and those with and for whom he worked. This was the case when he wrote *The Continentalist*, when he wrote the letters of *Phocion*, when he served in Congress and when he was a member of the Convention of 1787; and it remained true, although its effects were less apparent, during his labors to secure ratification. But at the head of the fiscal department of the administration, he found the situation radically changed. As compared with the earlier times he had, in spite of the growing divergence of view between himself and the people, a free hand. Behind him were Washington and the Federalists; before him was a task which, although great and difficult, — or rather because of its greatness and difficulty, — was to him infinitely attractive; the task, namely, of administering the new and reluctantly accepted national government in such a way as to make the nation itself united, strong, prosperous and respected.

All students of the Federalist period are acquainted with the admirable way in which Hamilton organized his department, and with that comprehensive financial policy which was a chief agency in restoring economic prosperity and in consolidating the Union. In this policy Hamilton provided for meeting in full existing national and state obligations; for easing the bur-



den of payment by a wise funding scheme; for obtaining a national revenue as we are now doing, by means of imposts and excises; for aiding the operations of the Treasury and facilitating the credit transactions of the people through the establishment of a national bank; and for increasing the economic and thereby the political independence of the country through a protective policy. It would be difficult to overrate the far-reaching educational influence of these measures. There is one chapter in the history of certain American states which no one who cares for the good name of our people likes to read,—the chapter, namely, which narrates the dealings of these states with their creditors. But when we read of repudiation by individual commonwealths, it is consoling and encouraging to remember the honorable course in respect to financial obligations which the national government has thus far pursued. This policy of public honesty was inaugurated by Hamilton. Other statesmen, it is true, and the general sense of the people were on his side; but he led the movement, and on him fell the heaviest blows of the truly formidable opposition. Probably no feature of his plan was attacked so often and so vehemently as the funding scheme; and yet, without this or its equivalent, adequate provision for the public indebtedness could not have been made. One of Hamilton's strongest motives for an honest public policy was the tendency it would have to make honesty and fair dealing elements of American character. In his *First Report on the Public Credit*, communicated to the House of Representatives January 14, 1790, he said:

In so strong a light . . . do they [the maxims which uphold public credit] appear to the secretary that on their due observance, at the present critical juncture, materially depends in his judgment the individual and aggregate prosperity of the citizens of the United States; their relief from the embarrassments they now experience,—their character as a people; the cause of good government.<sup>1</sup>

In the summer of 1792 (July 29) Washington sent Hamilton a list of objections to the financial policy of the administration. These objections Colonel Mason of Virginia had communicated

<sup>1</sup> Works II, 49, 50.

to the president, and it was supposed that they represented the views if not the authorship of Jefferson. To these Hamilton made reply on August 18. The paper is remarkable in many ways. The answers to the twenty-one objections were prepared in haste and were copied, so Hamilton wrote Washington in the accompanying note, "just as they flowed from my heart and pen without revision or correction." For this very reason their value as a portrayal of opinions and character is all the greater. In meeting the twentieth objection, that "the owners of the debt are in the Southern, and the holders of it in the Northern division," Hamilton made the dignified and characteristic reply :

If this were literally true, it would be no argument for or against anything. It would be still politically and morally right for the debtors to pay their creditors.<sup>1</sup>

Hamilton recognized to the full the immense value of credit both in national and private economy; and he recognized further that character, moral as well as industrial, is the most solid and durable foundation of credit. Moreover, in order to estimate justly both the difficulty and the value of his service to the moral and economic welfare of the American people, it is necessary to remember that he lived in a revolutionary age, when the influences which tend to weaken the sense of obligation are unusually active and powerful. That Hamilton's ideal of public honesty was higher than the popular ideal, and that his courage and firmness in supporting his ideal were remarkable, will hardly be questioned by those who realize the demoralization which followed the close of the Revolutionary War — a demoralization which led to and was increased by the stay laws and legal tender acts, which in many states debauched the conscience of the citizen then in much the same way that state repudiation has debauched it in more recent times. It would however be wide of the mark to assert that the opposition to Hamilton was due in any considerable degree to his championship of national honesty. The dislike aroused by the funding scheme and by other features of his policy rested in

<sup>1</sup> Works II, 274.

the main on other grounds. In the *Report on the Public Credit* already quoted the writer says :

To promote the increasing respectability of the American name ; to answer the calls of justice ; to restore landed property to its due value ; to furnish new resources both to agriculture and commerce ; to cement more closely the union of the states ; to add to their security against foreign attack ; to establish public order on the basis of an upright and liberal policy, — these are the great and invaluable ends to be secured by a proper and adequate provision . . . for the support of public credit.<sup>1</sup>

This enumeration of ends is not unlike that in the preamble to the Constitution. To our ears it is strictly orthodox. But in 1790 it suggested to many what indeed in one sense it was, a plan of campaign against state sovereignty ; and at that time state sovereignty was one of the strongest prepossessions of the American people.

The forcible suppression of the Whiskey Insurrection taught a people who hitherto had obeyed only local governments, colonial or state, that they must respect and submit to the authority of the new national government. Other measures, particularly the funding scheme, the bank and, later, the policy of protection, made large classes and powerful interests the permanent allies of the national government, and therefore depressed correspondingly the importance of the states. In all this the government gained, but Hamilton lost. The people were benefited by the discipline, but they did not like the man who administered it. The feeling of the masses may be gathered from the wrathful words of Jefferson, their truest representative. December 28, 1794, he wrote Madison :

The excise law is an infernal one. The first error was to admit it by the constitution ; the second, to act on the admission ; the third and last will be to make it the instrument of dismembering the Union and setting us all afloat to choose what part of it we will adhere to. The information of the militia, returned from the Westward, is uniform, that though the people there let them pass quietly, they were objects of their laughter, not of their fear ; that a thousand men could have cut off their whole force in a thousand places in the Alleghany ; that the detestation of the excise law is universal, and has now associated with it

<sup>1</sup> Works II, 52.

a detestation of the government ; and that a separation which perhaps was a very distant and problematical event, is now near and certain, and determined in the mind of every man.<sup>1</sup>

In recalling the relation of Hamilton to protection it is important to observe that his chief motive as set forth in the famous *Report on Manufactures*, was to strengthen the Union ; he does not mention as a reason for protection that on which the advocates of the present system place their main reliance, namely, its alleged tendency to raise wages. But the end which Hamilton wished to secure through protection is now fully attained. No one questions to-day the unity or the strength of the United States. The recent complimentary assertion of the Russian ambassador at Berlin, that the United States "have nothing to ask and nothing to fear," if not absolutely true, is still far truer of us than of any other people. Our danger is not that we shall suffer injustice, but that tempted by our strength we shall perpetrate injustice.

In respect to foreign policy Hamilton was in hearty accord with Washington. He held that the United States should seek peace and favorable commercial relations with other countries ; that they should hold themselves aloof from the quarrels of foreign states ; that they should resent foreign interference in our domestic affairs, and that they should resist the extension of European and seek the increase of American influence in the Western world. He was, however, eminently prudent. His first aim was peace. Unlike Napoleon, the soldier in him was subordinate to the statesman. At the close of the War of Independence he was friendly to France. Even at the beginning of the French revolution his good will towards that country was marked ; but when the Jacobins came into control his early sympathy changed into aversion and hatred, and he began to look on England as the defender of what was best in modern civilization. In this too he differed from the majority of his fellow-citizens. They remained, even during the reign of terror, steadfast in friendship for France and in enmity towards England.

<sup>1</sup> Jefferson, Works IV, 112.

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Concerning the wisdom and utility of Hamilton as a cabinet officer, the conflict of opinion which raged his day has almost ceased. Time has amply vindicated his intentions and his methods. The accusation that he sought to re-establish monarchy was altogether false. The testimony of contemporaries and his own correspondence evidence indeed there never was reasonable ground for doubting his loyalty to the republican system. That his measures were wise is proved both by their immediate effect and their ultimate success by his enemies. Apart from the charge that he was a monarchist, the substance of the indictment against him is that to a hurtful degree he sought to strengthen the federal government and to weaken the states. But when he retired from office was the federal government too weak to have it been so at any subsequent time down to the close of the Civil War? Have the states at any time previous to 1865 been too weak to discharge the functions which properly belong to them? On the contrary, is it not true that within the period of his administration public interests suffered oftener from defect of federal action than from excess in the national government and excess of power in the states? Is the evil traceable to causes quite outside of Hamilton's administration? It is moreover a fair question whether the Union could have withstood the shock of secession had it not been for the strength which Hamilton gave to the national government.

After his retirement from the cabinet Hamilton continued his practice of seeking to educate public opinion through the medium of the newspapers. Under the signature of "The Federalist" he discussed and defended in a masterly way the measures which Jay had recently negotiated with England. The paper numbered thirty-eight and had, in the decision of the convention, been put at issue, an influence which may be compared to that of *The Federalist* on ratification. Many other papers appeared during the years 1796, 1797 and 1798, none of which bore on the controversies with France. In some

notes a marked change of tone. Denunciation is a prominent feature. The appeal is no longer to the people as a whole but to the Federalists. This change, it is true, was a natural consequence of the development of parties and the growth of partisanship; none the less it signifies loss and deterioration.

To these closing years of the century belongs the unhappy chapter which narrates the quarrel with John Adams. We cannot exonerate Hamilton. His intrigues against Adams in successive presidential campaigns, although they may have been prompted by zeal for the public welfare, were unnecessary and mischievous. The pamphlet attack in 1800, which tried to prove that the Federalist candidate was unfit for the presidency, and then advised the party in spite of his unfitness to vote for him, showed that its author, under strong temptation, was capable of jeopardizing the success of his party for the sake of gratifying personal animosity. His earlier relations with Adams' cabinet tended to pervert for the time being the natural functions of that very important body. Adams had inherited his cabinet from Washington. Its three most important members, Pickering, Wolcott and McHenry, were at the outset unfriendly to Adams and soon became sharply hostile. They looked upon Hamilton as the real head of the Federalist party and maintained with him a close correspondence. Their letters contain much bitter criticism of the president, and betray now and then something very like treachery. Hamilton undertook with the aid of the secretaries two things: first, to direct the policy of the administration; second, to obtain matter which he could employ in his warfare upon Adams. The mere statement of the facts condemns him and his allies. Although justly rated as a man of honor, Hamilton was guilty at times of strange lapses, and this was one of the gravest. The intrigue was an act of political libertinism; its essence was infidelity.<sup>1</sup>

<sup>1</sup> Mr. Lodge takes a different view: "The fact that he was not personally on good terms with Adams does not affect the matter. Hamilton was fully entitled to write private letters to members of the cabinet, and they had a right to receive them. The fact that the secretaries, after they found themselves in opposition to the president, ought to have retired, is a wholly distinct matter, and must be discussed on different grounds. If they chose to be guided by Hamilton, a private individual and

Again, Hamilton's course towards Adams subjects him to censure as a party leader. Good leadership requires the fullest use of every means which can be honorably employed to promote party success. John Adams was an important factor in the political situation. He was confessedly one of the greatest of Americans. He stood nearer to the people than most of the Federalist leaders. He, better than they, could mediate between the aristocratic conservative classes and the multitude. But Hamilton's treatment of Adams was calculated to lessen, and undoubtedly did lessen, the possible service both of Adams and himself to Federalism and to the Union. His attempt to be the power behind the throne, while he was the enemy of its occupant, was, to say the least, a wide deviation from the honorable and patriotic course which he usually pursued.

The year 1800 marks the darkest period in the life of Hamilton. During its early months he made the attack upon Adams. On May 7, he wrote to John Jay, the Federalist governor of New York, as follows :

You have been informed of the loss of our election in this city . . . the moral certainty is therefore that there will be an anti-Federal majority in the ensuing legislature ; and the very high probability is that this will bring Jefferson into the chief magistracy, unless it be prevented by the measure which I shall now submit to your consideration, namely the immediate calling together of the existing legislature. . . . Scruples of delicacy and propriety, as relative to a common course of things, ought to yield to the extraordinary nature of the crisis. They ought not to hinder the taking of a legal and constitutional step to prevent an atheist in religion and a fanatic in politics from getting possession of the helm of state. . . . The calling of the legislature will have for its object the choosing of electors by the people in districts ; this will insure a majority of votes in the United States for a Federal candidate. . . . In

unofficial leader, that was their affair, not his." — Henry Cabot Lodge, *Alexander Hamilton* (American Statesmen Series), p. 234.

It seems to me, on the contrary, that if these men, over whom Hamilton had an almost controlling influence, chose to do a public and official wrong, it was emphatically "his affair" ; simply as a good citizen he was under obligation to dissuade them. The measure of Hamilton's responsibility appears when we reflect that he instigated the misconduct of Wolcott and Pickering and was their accomplice ; and that he himself had served in the cabinet under Washington, and knew better than most what was due to the president from a member of the cabinet.



weighing this suggestion you will doubtless bear in mind that popular governments must certainly be overturned, and, while they endure, prove engines of mischief, if one party will call to its aid all the resources which vice can give, and if the other (however pressing the emergency) confines itself within all the ordinary forms of delicacy and decorum.<sup>1</sup>

Upon the back of this Machiavellian letter Jay wrote the following words: "Proposing a measure for party purposes which it would not become me to adopt." In December Hamilton was himself again. The presidential election had been transferred to the House of Representatives and the presidency lay between Jefferson and Burr. The Federalists, with whom the decision rested, were disposed to support the latter. To prevent this degradation of the party, the office and the nation, Hamilton exerted himself to the utmost, and with success.

The substance of the remarkable letters through which Hamilton sought to save the presidency from Burr may be expressed in these words: Democracy is a terrible evil; but, since the government must be democratic, let us place it in the hands of Jefferson, who will pursue "a temporizing policy," rather than in the hands of Burr, who is "an American Catiline."

The differences with his party which began in 1800 continued to the end. The Federalists apostatized from national doctrines: he remained true. They censured and he approved the purchase of Louisiana. The projects of disunion which certain Federalist leaders favored, he steadfastly opposed. In 1804 he entered the lists a second time in order to prevent a coalition between his party and Burr; and this effort, although successful, cost Hamilton his life.

This brings to a close the chronological survey of Hamilton's work. What of that work as a whole? The thirty years between his first public appearance, in 1774, and his final struggle with Burr, in 1804, belong to a great period in the history of the world. In the United States three revolutions were accomplished: the first separated the colonies from Great Britain; the second gave us the constitution and the Federalist administrations; the third placed the national government in

<sup>1</sup> Works VIII, 549.



the hands of Jefferson. Hamilton's services were rendered in connection with the first and second of these revolutions — chiefly the second. The triumph of the third restricted the sphere of his public activity and usefulness to very narrow limits. That he assisted materially in securing the independence of the colonies is not questioned. Still, his relation to that movement was very unlike that of his fellow-colonists. Only in a superficial sense was the Revolution due to the quarrel over the question of taxation. Rightly viewed, this quarrel determined the time and method of a separation; but the real cause of separation was incompatibility of character and interests between the American and British peoples. In the course of the century and a half — some five generations — from the first period of rapid settlement to the outbreak of the Revolution, the English colonists became Americans; and a new civilization grew up which, in important particulars, was unlike the old. The taxation grievance by itself could never have converted a law-abiding people, such as the colonists were, into revolutionists. What did most to bring this about was the recognition, on their part, that in character and spirit there had come to exist between them and their British kindred wide and growing differences; and that out of these differences must arise a perpetual conflict of interests and policy. In this new civilization the two most characteristic features were hostility to privilege and attachment to local self-government, — in other words, democracy and what, owing to the peculiar form of its later most prominent manifestation, we call state rights. Hamilton did not feel in any marked degree the motives which spring from these two characteristic elements of American civilization. He had not inherited an American character. His ancestry had had no part in the distinctive life of the colonies of the mainland. He came to this country, as he himself tells us, when "about sixteen." Judging from the pamphlets which he published only two years later, he must have been, when he left his West Indian home, as mature as the average American of twenty-two or perhaps of twenty-five. To him America was neither a birthplace nor a nursery; and only in a qualified sense

can it be called a school. It was rather a field into which he entered after his character was formed and his equipment for work was nearly completed. Hence he took part in resisting the mother country, not because he wished democratic institutions, nor because he wished the colony of New York to enjoy the right of self-taxation, but, to use his own words, because the mother country "attempted to wrest from us those rights without which we must have descended from the ranks of freemen." And these rights, as he understood them, were those enjoyed by Englishmen in England. Nevertheless when, owing to the existence in others of motives which he did not feel, resistance developed into revolution, he too became a revolutionist and a very effective one. Even before independence was achieved, Hamilton in common with other patriots was called upon to answer two questions: first, shall the United States be a confederacy or a nation; second, what shall be their institutions and their type of civilization? It is the way in which he answered these questions that has made Hamilton one of the greatest characters in American and in modern history. His reply to the first was that the United States must be a nation, and to this end must have a national government clothed with ample powers to provide for every national want; that the administration must pursue an energetic and centralizing policy in order that the character of the people and the traditions of government might become thoroughly national. This was Hamilton's theory. At the close of the war of independence its realization seemed impossible. He saw in the thirteen states not a nation, but an aggregation of turbulent, semi-socialistic democracies, in which the national idea and the highest national interests were being sacrificed to local and class interests and to the idea of the unqualified sovereignty of the individual state. Against these tendencies his struggle, although heroic, was in vain. The riot of democracy and particularism had to go on until those who owned property and those who cared for law and order became thoroughly alarmed. With the rebellion of Shays began in earnest that movement which was both an aristocratic reaction against democracy,

and a nationalist reaction against state rights, — the mover which gave us the constitution of 1787 and twelve years of Federalist supremacy. This reaction was Hamilton's opportunity. He was its master spirit. How wisely he used it in promoting the nationalization of the American people and the institutions we already know.

Not less distinct and scarcely less important was Hamilton's answer to the question what should be the type of civilization in the United States. He wished to create here, as far as the situation would permit, an American England. In all that he did, the models and working ideas were of English origin. He praised the English constitution in the Convention of 1787; the features of our constitution which gave it most resemblance to that of England he defended convincingly in *The Federalist*. In his career as secretary of the Treasury he probably came nearer than any other American cabinet officer to wielding influence over Congress comparable with that of a British prime minister over Parliament. The principles that underlie our financial policy are in the main those which had been tested and approved by the experience of England. His tolerant attitude towards the Tories was the natural expression of his English sympathies as well as of his sense of justice and humanity and of wise public policy. But in his use of English ideas he was not a mere copyist. The originality and wisdom with which he modified are as striking as the boldness with which he appropriated. Jefferson and, later, John Adams called Hamilton "British." The word was applicable only in so far as it implied a purpose to establish here those features of the English system which were adapted to the American character and situation. In so far as it suggested a willingness to sacrifice American interests to British interests, it was grossly unjust.

The value of the service which Hamilton rendered in aid of the effort to re-establish the processes which connected the development of the United States with that of England, is greater than we can easily realize. Although England has made it hard for us to acknowledge the debt, the words of Jay are true :

It certainly is chiefly owing to institutions, laws and principles of policy and government originally derived to us as British colonists, that, with the favor of Heaven, the people of this country are what they are.<sup>1</sup>

It is also true that a people, as little as an individual, can afford to throw away what is inherited. But, owing to the animosities which the war kindled, to the obstinate unfriendliness of England, and to the seductive policy of France, we were then under strong temptation to develop our national system on a basis too exclusively American and French. From this folly Hamilton helped to deliver us.

Any just estimate of Hamilton's work must take into the account what he did for the education of the public. His usual method of seeking support was through appeals to the reason of thoughtful and patriotic citizens. In this his success was phenomenal. Friends and foes testified that in the qualities which enable a writer to convince, Hamilton was without a rival. In what he wrote there was rarely a trace of the partisan, never of the demagogue. Much of his work was done while questions relating to the constitution engaged the attention of the public. For the treatment of such themes he had a singular aptitude. The extent of his writings is as remarkable as their solidity. He wrote, often at considerable length, on every important public question which arose during the Federalist period. The result was a collection of writings which embody the best political thought of the time. Indeed, considering both range and quality, it is scarcely venturesome to say that Hamilton's works exceed in value those of any other American statesman.

What were the defects of Hamilton's statesmanship? First, he failed as a party leader. This was in part because he would not accept the conditions of successful leadership. The party leader who succeeds simply goes ahead in the direction which the party is inclined to take. The apparent leader is in reality the follower. But Hamilton marked out his own course and would not deviate from it. In the second place, his attitude

<sup>1</sup> Life and Writings of John Jay, II, 262.

towards democracy was mistaken. Democracy was not, as he wrote Sedgwick a few hours before his death, "our real disease." That he thought it was, is not surprising; for in him the love of order was instinctive, and the predilection for conservative methods of progress was strongly marked. In his day, moreover, democracy, both here and in France, showed itself at its worst. But, as we can now see, democracy is essential to progress; it is both the means and the fruit of the diffusion of civilization.

Equally mistaken was Hamilton in wishing to destroy the states. They hindered, it is true, the work of consolidating the Union; but at the same time they stood for the invaluable principle of local self-government. The evil which they did was of minor consequence when compared with that which their destruction would have caused.

These defects, considerable as they are, did not, during the period of his greatest usefulness, seriously affect the work of Hamilton; but during his closing years, they proved fatal to his influence and, it is mournful to add, to his peace of mind. In 1801 the American people came under the sway of Jefferson and refused to listen any longer to the conservative statesman who hated and warred upon their most cherished political beliefs. Hamilton recognized his isolation and not without bitterness wrote:

Mine is an odd destiny. Perhaps no man in the United States has sacrificed or done more for the present constitution than myself; and contrary to all my anticipations of its fate, as you know from the very beginning, I am still laboring to prop the frail and worthless fabric. Yet I have the murmurs of its friends no less than the curses of its foes for my reward. What can I do better than withdraw from the scene? Every day proves to me more and more, that this American world was not made for me.<sup>1</sup>

But he had not failed. Although in hands that he distrusted, the republic was safe; and no one had done more than he to make it so.

ANSON D. MORSE.

<sup>1</sup> Works VIII, 591.

## THE GENERAL PROPERTY TAX.

**I**T has been said recently that there is no science of finance in England. The same remark is equally true of America, at least in the domain of public revenue. In no other civilized country has there been less discussion of the principles of taxation ; in none can there be found a more unsatisfactory system. The reason is plain. As long as prosperity was general and the public expenses were small, taxation was light and its burden was scarcely felt. But during the last few decades, with the complicated demands of modern civilization, public expenditures, both local and national, have increased to such an extent as to exert a sensible pressure on the population. The problems of public revenue have been pushed to the front. The expressions of discontent with various phases of our financial system have become numerous and loud. But for the most part the discussion has been superficial and the conclusions reached have been inadequate.

There is perhaps no single feature of our tax system that is commonly thought to be more thoroughly American than the general property tax. The proportional taxation of all property is held to be an instinctive feeling original to and thoroughly ingrained in the minds of our people. And yet it may be said that no institution has evoked more angry protest, more earnest dissatisfaction, than this very tax. Its opponents, however, have confined themselves to a portrayal of its practical shortcomings. No one has hitherto attempted to give the deeper reasons why the property tax is unsuited to the present generation or to discuss the subject in its wider relations with the science of finance in general. It is proposed to show in this series of papers that our property tax is by no means original to this country ; that it has gone through precisely the same evolution in many other places. It is further proposed to prove that the property tax is as destitute of theoretical justification

as it is defective in its practical application. And it is proposed, finally, to discuss the reforms of our direct taxation — some of them partly completed, some projected, and some hitherto neglected.

### I. *Practical Defects of the Property Tax.*

The defects of the general property tax may be discussed under five heads.<sup>1</sup>

1. *Lack of uniformity*, or inequality of assessment. The property tax with us is an apportioned, not a percentage tax. According to the latter method the tax would be levied on the individual taxpayer by means of a fixed rate or percentage of all property. According to the actual method the total amount to be raised by the state is first ascertained, and is then apportioned to the various subdivisions according to the appraised valuation in each. The final rate of taxation is obtained by adding the local tax to the state tax. The rate of taxation ought therefore to vary only with the local needs, and would indeed so vary if property were everywhere assessed uniformly. As an actual fact, however, this is far from being the case. In most of the commonwealths the tax laws provide for the assessment of property at its "fair cash value." And in all the states it is expected that the valuation shall everywhere be made at a uniform rate. Yet it is a notorious fact that in scarcely any two contiguous counties is the property — even the real estate — appraised in the same manner or at the same rate. In regard to the manner, it frequently happens that corporation property, e.g. the roadbed of a railway, is assessed in one county at an immense sum per mile and is treated in the adjacent county like a piece of grazing land.<sup>2</sup> In regard to the

<sup>1</sup> In the monograph entitled *Finance Statistics of the American Commonwealths* (Publications of the American Statistical Association, Dec. 1889) I have collected a large number of citations from the commonwealth financial reports for the past year. The reader is referred to that publication for the verification of statements for which no special authority is adduced in these pages. See especially pages 401–417.

<sup>2</sup> In New York, for example, two adjoining counties made a difference of \$24,000 per mile in assessing the same railroad. Other counties varied \$20,000 per mile. Report of the State Assessors, 1879, p. 19.



rate, the assessors follow the practice sanctioned by local usage or decide by mere caprice. The official reports abound with complaints or open confessions that property is assessed all the way from par to one twenty-fifth of the actual value. In one county the property is listed at its full worth; in the next county the assessment does not exceed a tithe of its value.<sup>1</sup> That this is a glaring infraction of the fundamental rule of equality in taxation is apparent. As between counties it leads to undervaluations which give an entirely fallacious view of the public resources. As between individuals it results in gross injustice. A tax rate of a given amount on one may be double, quintuple or decuple the nominally equivalent tax on another. The first constitutional injunction — that of uniformity of taxation — is flagrantly violated. Assessors are compelled openly to disregard their oath, or to incur certain defeat at the next election.<sup>2</sup> There is no pretence of complying with the law.

An escape from these evils has been sought in the creation of boards of equalization. A large number of commonwealths<sup>3</sup> have attempted to correct the undervaluation of the county officials by giving a state board power to raise or lower the valuations (or in some cases the rate) in the hope of securing a substantial uniformity. But the effort has been very imperfectly successful. The composition of the boards is such as to render any comprehensive scrutiny of the county returns almost impossible. Even were the boards to be constituted in an ideal manner, the local jealousies and bickerings would still continue

<sup>1</sup> Biennial Report of the Auditor of Public Accounts of Nebraska, 1886, p. 4. In New York the range is from 18 to 100 per cent. Report of State Assessors for 1883, p. 3. In Illinois the range is from 5 to 100 per cent. Report of the Revenue Commission of Illinois, 1886, p. ii.

<sup>2</sup> Report of the State Assessors of New York for 1886, p. 20. The report for 1884, p. 4, speaks of the assessors' open "intent to ignore the law." In one case an assessor objected to a certain declaration, and declared that it would be necessary to swear the merchant. The latter answered: "If you swear me, I'll vote against you next time." West Virginia Tax Commission, Preliminary Report, 1884, p. 13.

<sup>3</sup> Boards of equalization are found in Arizona, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, New Hampshire, New York, Ohio, South Carolina, South Dakota, Vermont, Wisconsin and Wyoming.



to prevent any just distribution of the burdens.<sup>1</sup> The boards themselves confess that such distribution is impossible under our present system.<sup>2</sup> Boards of equalization are thus at best a mere makeshift, a clumsy and cumbrous attempt to accomplish the impossible. In the drastic phrase of Mr. Townsend: "A people cannot prosper whose officers either work or tell lies. There is not an assessment roll now made out in this state that does not both tell and work lies."<sup>3</sup> As long as this is true, boards of equalization are of little avail.

2. *Lack of universality*, or failure to reach personal property. This is a defect which, although the most flagrant, perhaps requires the least commentary; for it is so patent that it has become a mere byword throughout the land. Personal property nowhere bears its just proportion of the burdens. And it is precisely in those localities where its extent and importance are the greatest that its assessment is the least. The taxation of personal property is in inverse ratio to its quantity. The more it increases, the less it pays. The reason is plain. So far as it is intangible, personal property escapes the scrutiny of the most vigilant assessor; so far as it is tangible, it is exempted in its chief form, as stock in trade, by every intelligent official. In the mad race for wealth it would be suicidal for the local assessors in large cities to assess the merchant's capital, with the sole result of driving it away to localities more favored by their financial officers. It is scarcely necessary to give figures to substantiate these statements. The tenth census of the United States asserts that from 1860 to 1880 the assessed valuation of real estate increased from \$6,973,006 to

<sup>1</sup> "The strife between counties to reduce assessments has not ceased and in all probability will not, as long as assessors are elected, or selfishness be a passion in the human breast." Report of the California State Board of Equalization for 1885 and 1886, p. 4.

<sup>2</sup> "No board or officials, however diligent or however conversant they may be with the subject, can make an equalization which to themselves will be absolutely satisfactory." Annual Report of State Assessors of New York for 1887, p. ii. From ocean to ocean the same complaint is found.

<sup>3</sup> M. I. Townsend, in Proceedings and Debates of the Constitutional Convention of New York, 1867-68, III, 1945. Cf. the first Report of the (New York) Commissioners to revise the laws for the assessment and collection of taxes (1871), p. 33.

\$13,036,767, while that of personal property decreased from \$5,111,554 to \$3,866,227.<sup>1</sup> In California personal property was assessed in 1872 at 220 millions of dollars, in 1880 at 174 millions, and in 1887 at 164 millions, — a net decrease in fifteen years of 56 millions. Real estate increased during the same period from 417 millions to 791 millions.<sup>2</sup> Personal property paid 17.31 per cent, real estate 82.69 per cent of the taxes. In Illinois the figures for 1888 are 20.18 per cent and 79.82 per cent respectively. In Cook county (Chicago), out of a total valuation of 210 millions, personal property paid only 14 per cent.<sup>3</sup> In New York the figures are as follows:<sup>4</sup>

	<i>Real Estate.</i>	<i>Personal Property.</i>
1843 . . . . .	\$ 476,999	\$118,602
1859 . . . . .	1,097,564	307,349
1871 . . . . .	1,599,930	452,607
1878 . . . . .	2,373,418	364,960
1888 . . . . .	3,122,588	346,611

The proportion paid by personal property has decreased steadily every year, until according to the last figures it pays but 9.99 per cent of the state taxation, over against 90.01 per cent falling on real estate.<sup>5</sup> In New Jersey, in 1887, in one township the real estate was assessed at \$272,232, the personal property at \$591. In another the figures were \$2,274,900 and \$47,150 respectively!<sup>6</sup> In New York the personalty was returned in one town at \$5,000, in the adjoining but no more prosperous town at \$700,000.<sup>7</sup>

These striking figures become ridiculous when it is remembered that in our modern civilization the value of personal property far exceeds that of real estate as understood by the taxing power. It is true that the legal distinction between real and

<sup>1</sup> Tenth Census of the United States, vol. vii, p. 9.

<sup>2</sup> Biennial Report of the State Comptroller for 1887-88, p. 135.

<sup>3</sup> Biennial Report of the Auditor of Public Accounts, 1888, p. 204.

<sup>4</sup> First Annual Report of State Assessors, 1860, p. 13; Report for 1888, p. 13.

<sup>5</sup> Report of State Assessors for 1888, p. 5.

<sup>6</sup> Report of the Comptroller of the State of New Jersey for 1887, pp. 57, 95.

<sup>7</sup> Report of State Assessors for 1877, p. 10.

personal property fluctuates in the various commonwealths ; in the eyes of the assessors, real estate generally includes land and the fixtures thereto, all the other forms of wealth being regarded as personal property. In California, indeed, the constitution of 1879 provides that mortgages of real estate shall be regarded and taxed as realty. The law of Massachusetts and Oregon is similar. But even if mortgages were counted as real estate, and even if (as is nowhere done) other certificates of ownership in realty were also counted as real estate, it would still remain true that personal property constitutes the greater part of the national wealth. For personal property does not denote merely movable objects. It includes money, public obligations, and the vast mass of intangible property represented by securities of corporations, of which only a small portion are certificates of ownership in realty. Above all, personal property includes the entire and ever-increasing annual products of agriculture and industry — the gigantic mass of modern wealth devoted mainly to consumption, but existing also in the stock in trade of individuals.<sup>1</sup> Even in our most western commonwealths, where the communities are still mainly agricultural, it is an acknowledged fact that the personalty exceeds the realty. The auditor of Washington tells us that if a true valuation could be reached it is "clear and incontestable that the wealth of the territory in personal property, for the purposes of taxation, would largely predominate over that of real estate."<sup>2</sup> And if this is true of the far West, how much greater must be the relative proportion of personalty in the busy marts of the East.<sup>3</sup> Yet the more differentiated the industry and the more predominant the personalty, the more does the latter contribute to the public charges ; until in

<sup>1</sup> This element alone is calculated in the tenth census as over 8,000 million dollars out of an aggregate true valuation of property of 43,000 millions.

<sup>2</sup> Report of the Territorial Auditor to the Legislative Assembly, 1887, p. 94. Biennial Report of the Auditor of Iowa, 1881, p. 8, and that of the Comptroller of Idaho, 1887-88, p. 74, to the same effect.

<sup>3</sup> Cf. New York State Assessors' Report for 1880, and Comptroller's Report for 1889, p. 33: "I am sure that the actual value of the personal property legally liable to taxation exceeds that of the real estate."

foremost state of the Union realty pays more than nine-tenths and personalty less than one-tenth.

The taxation of personal property, I repeat, is in inverse ratio to its quantity. The more it increases, the less it pays. The general property tax thus sins against the principle of universality of taxation even more than against the principle of uniformity. In the middle ages whole classes were exempt by express provision of the law; in our time and country whole classes are exempt by the inevitable working of the law. It is the law which is equally at fault in both cases.

3. *Incentive to dishonesty.* One of the worst features of the general property tax is that any attempt to enforce the taxation of personalty by more rigid methods results in evasions and deceptions. The property tax necessarily leads to dishonesty, and this for two reasons. In the first place, under our system whole classes of personalty are exempt from state taxation. The most familiar examples are imported merchandise in the original package; United States bonds, notes, checks and certificates; property *in transitu*; goods produced in another state sent on commission; deposits in savings banks, *etc.* The temptation for the taxpayer to convert his property temporarily into these classes is generally irresistible. Not only does the law hold out to individuals inducements to practice fraud, but it sustains them in its commission.<sup>1</sup> Secondly, wherever any pretence is made of enforcing the tax on personalty, and especially where the taxpayers are required to fill out under oath detailed blanks covering every item of their property, the inducements to perjury are increased so greatly as to make its practice universal. The honest taxpayer would willingly bear his fair share of the burden; but even he cannot concede his obligation to pay other men's taxes. The only result of more rigid execution of the law is a more systematic and universal system of deception. Official documents tell us that "instead of being a tax upon personal property, it has in effect become a tax upon igno-

<sup>1</sup> In *People ex rel. Ryan*, 88 N. Y. 142, the Court of Appeals held that the assessors were bound by a transaction which the court itself declared to be "a device to escape taxation."

rance and honesty. That is to say, its imposition is restricted to those who are not informed of the means of evasion. Those knowing the means, are restricted by a nice sense of propriety from resorting to them."<sup>1</sup> The tax commission of New Hampshire declares that "the mere failure to enforce the tax is of great importance, in itself considered, in comparison with the mischief wrought in the corrupting and demoralizing influences of such legislation."<sup>2</sup> The Illinois commission asserts that the tax is "debauching to the conscience and subversive of the public morals — a school for perjury, promoted by law."<sup>3</sup> The Connecticut commission maintains that the resulting "demoralization of the public conscience is an evil of the greatest magnitude."<sup>4</sup> The West Virginia commission tells us that "the payment of the tax on personalty is almost as voluntary as a donation to the neighborhood church or Sunday-school."<sup>5</sup> And almost every annual report of the state comptrollers and assessors complains bitterly that the assessment of personalty is nothing but an incentive to perjury.<sup>6</sup>

4. *Regressivity.* Taxes are progressive when their increase is more than proportional to the increase of the property or income taxed, *i.e.* when the rate itself increases with the increase of the property. Taxes are regressive when the rate increases as the property or income decreases. The general property tax in its practical effects is regressive. For the tax on personalty is levied practically only on those who are not listed on the assessor's book as liable to the tax on real estate. Those who own no real estate are not taxed at all; those who possess realty bear the taxes for both. The weight of taxation thus rests on the farmer. In the rural districts the assessor

<sup>1</sup> Report of the Commissioners of Taxes and Assessments in the City of New York, 1872, p. 9.

<sup>2</sup> Report to the Legislature of Hon. George Y. Sawyer, 1876, p. 16.

<sup>3</sup> Report of the Revenue Commission, 1886, p. 8.

<sup>4</sup> Report of the Special Commission on Taxation, 1887, p. 27. Cf. the New York Tax Commission Report, p. 11.

<sup>5</sup> Preliminary Report of the Tax Commission, 1884, p. 10.

<sup>6</sup> Cf. Report of California Board of Equalization, 1885-86, p. 6.

add the personalty, which is generally visible and tangible, to the realty and impose the tax on both. We hear a great deal about the decline of farming land. But one of its main causes has been singularly overlooked. It is the overburdening of the agriculturist by the general property tax. What is virtually a real property tax in the remainder of the state becomes a general property tax in the rural regions. The farmer bears not only his share, but also that of the other classes of society. Thus official documents tell us that "the class of property that escapes taxation most, is the class of property that pays the largest dividends."<sup>1</sup> And in general it may be said, with our state auditors, that "the property of the small owner, as a rule, is valued by a far higher standard than that of his wealthy neighbor."<sup>2</sup> Or, as it is put by others :

In every portion of the state we find the most unproductive property, and that of the lowest real value, assessed at the highest ratio. The rule holds good that those who have to battle hardest with life for subsistence, are compelled to pay the most onerous taxes on the real value of their property.<sup>3</sup>

It is no wonder that in their desperation the small farmers should cry out for the equal enforcement of the laws taxing personalty ; it is no wonder that they should attempt to stem the current in ignorance of the impossibility of the task. They have forgotten Walpole's saying, that it is safer to tax real than personal estate, because "landed gentlemen are like the flocks upon their plains, who suffer themselves to be shorn without resistance ; whereas the trading part of the nation resemble the boar, who will not suffer a bristle to be pluckt from his back without making the whole parish to echo with his complaints."<sup>4</sup>

5. *Double Taxation.* Double taxation is of two kinds : that which is *prima facie* double — double taxation in itself — and

<sup>1</sup> Biennial Report of the Auditor of Iowa, 1880-81, p. 6.

<sup>2</sup> Biennial Report of the Auditor of Kentucky, 1887, p. iv.

<sup>3</sup> Report of the State Assessors of New York, 1873, p. 9. Cf. West Virginia Tax Commission, Preliminary Report, 1884, p. 8; Report of the Comptroller of Tennessee, 1888, p. 16.

<sup>4</sup> Cf. Sinclair, History of the Public Revenue, vol. iii, appendix, p. 79.

duplicate taxation arising from interstate complications. The second form will be omitted here, as it is not peculiar to the property tax but may arise in connection with almost any direct tax. The existing chaos on this point will be discussed in another article. I confine myself here to the first form.

Perhaps the greatest weakness of our general property tax, and the one which has given rise to the most interminable discussion, is connected with the subject of debt exemption. On the one hand it is maintained that an offset should be made for all indebtedness, whether mortgage debt on real property or general liabilities on personalty. Individuals should be taxed on what they own, not on what they owe. To tax both borrower and lender is double taxation. This is the view of the Connecticut commission,<sup>1</sup> and the practice of a few states accords with it. On the other hand the majority of American investigators assert that deduction for indebtedness results practically in such injustice and deception as to be utterly unendurable. They therefore demand that there should be no offset of debts against property. This is the view of the Massachusetts and New Jersey commissions,<sup>2</sup> and the practice in many states.

Both these views are correct. To tax both lender and borrower for the same property is plainly double taxation, and therefore unjust. The fallacy of the contrary opinion consists in looking at the property rather than at the owner. What the state desires to reach is primarily the individual. It taxes his property simply because it considers this a test of his ability to pay. But his ability is manifestly reduced *pro tanto* by his debts. His true taxable property therefore consists in his surplus above indebtedness. Otherwise one would be taxed for what he has, and another for what he has not. This is the view accepted by all European authorities.<sup>3</sup> The only American scientist who holds to the contrary opinion, Amasa

<sup>1</sup> Commission of 1887, p. 26.

<sup>2</sup> Massachusetts Commission of 1875, pp. 95-98; New Jersey Commission of 1880, p. 20.

<sup>3</sup> Roscher, Finanzwissenschaft, p. 336; Wagner, Finanzwissenschaft, II, 432.

Walker, does so in a half-hearted way; for utterly arbitrary data, confesses that much and finally concludes that the income-tax is just one.<sup>1</sup> To tax both property and credit borrower, is plainly incorrect in principle and practice.<sup>2</sup>

On the other hand it is equally true that the system is thoroughly pernicious in its operation. The testimony that no portion of the tax laws contains more inducements to fraud and perjury than this system of deduction of fictitious debts is a paying investment where such deductions are permitted, attests the immunity from taxation in this way are universally successful. And they are most successful where property which already bears less than its share of the tax. The great majority of officials cry out against it as an utter abomination.<sup>3</sup>

Both methods are thus unendurable. Double taxation and no debt-exemption are equally bad. The system is no policy to the other in equal despair. We are led to the conclusion that the whole system is in fault lies not in the exemption but in the tax itself. The general property tax under either of these methods produces crying injustice. As there is no escape, the inference is that the injustice is of the general property tax. The New York commission leads to the very illogical conclusion that mortgage interest deducted from realty, but that there should be no debt in the assessment of personalty.<sup>4</sup> This discrimination wholly subversive of the first principle. There is no logical escape from one of the

<sup>1</sup> A. Walker, *Science of Wealth* (7th edition), p. 339.

<sup>2</sup> The best statement of the impolicy of double taxation is in J. P. Quincy, *The Taxation only of Tangible Things* (Boston, 1875). See J. P. Quincy, *Double Taxation in Massachusetts* (1889).

<sup>3</sup> Report of the Commissioners of Assessment and Taxation.

<sup>4</sup> First Report, pp. 60-69, 71-79. Cf. the sharp criticism in the Tax Commissioners' Report, p. 96.



taxation or debt-exemption; and under either plan the general property tax stands convicted by the test of experience.

Under a system, indeed, where there is no general property tax but simply a tax on real estate, the question of taxing mortgages assumes a different aspect and must be decided independently. In the United States many writers dilate upon the manifold advantages that would accrue from the exemption of mortgages. The benefits of exemption would be diffused throughout the community, they say. This is a sentimental view. The taxation of mortgages will not produce any material change, because, as experience has shown, the mortgagee will always shift the burden on the mortgagor in the shape of an increased rate of interest to compensate for the tax. Even were this not the case, the theory of the property tax cannot possibly permit a man whose wealth consists in mortgages to go scot-free. His ability remains the same, whether his property consists in mortgages or in other income-bearing investments. Exemption of mortgages is illogical and unjust. On the other hand, the rational theory of the property tax demands, as we have seen, the exemption of the mortgage debt, *i.e.* of the mortgagor. His ability is really reduced by the amount of the mortgage. The profits of his land go to pay the interest on his debt. To tax both lender and borrower is indeed double taxation. But the remedy consists in exempting not the lender, as our states sometimes do, but the borrower; not the credit of the mortgagee but the liability of the mortgagor. Tax the mortgagee on the amount of the mortgage and the mortgagor on the value of the property minus the mortgage. That is the only rational system.

The exemption of mortgage debts, however, has engendered so many practical difficulties owing to our interstate complications, that three commonwealths, California, Massachusetts and Oregon,<sup>1</sup> have been led to adopt a new system. The mortgagor there can offset the amount of the mortgage debt. The mortgage, on the other hand, is taxable in the hands of the

<sup>1</sup> California constitution, art. xiii, secs. 4, 5; Massachusetts law of 1883; Oregon law of Oct. 26, 1882 (code, §§ 2730, 2734, 2753).

mortgagee, but it is treated as realty, not as personalty. That is, it does not follow the *situs* of the mortgagee but is taxed in the locality where the mortgaged property lies. If the tax is paid by the mortgagor, he may recoup it from the mortgagee. In Massachusetts, indeed, this provision is practically void, because nearly all mortgages contain a clause requiring the mortgagor to pay taxes upon the mortgaged estate, and a further agreement to pay all taxes upon the debt in the event of the repeal of the law. The practical result is that the lender, not the borrower, reaps the benefit. The mortgagor bears more than his share, for the rate of interest has not fallen to an amount equal to the tax,—and the mortgagee goes scot-free. The Massachusetts system, notwithstanding the fact that it is much lauded by the moneyed interests,<sup>1</sup> is hence practically unjust. In California, however, all such agreements between mortgagor and mortgagee are void. The California system in so far satisfies the requirements of justice. The state is not defrauded of its income from the land, as would be the case if both mortgagor and mortgagee were exempt and as generally is the case even where only the mortgagor is exempt. The burdens are justly shared by those who are logically if not legally co-proprietors of the soil. But this system, I repeat, which regards the mortgage as realty and taxes the legal owner of the land only on the surplus above the mortgage,—this California system is defensible only on the assumption that there is simply a tax on real estate. As soon as we have the general property tax, the exemption must logically be accorded to all debts. And we are then immediately confronted by the dilemma discussed above.

If we sum up all these inherent defects, it will be no exaggeration to say that the general property tax in the United States is a dismal failure. No language can be stronger than that found in the reports of the officials charged with the duty

<sup>1</sup> Cf. the report of the Special Committee of the Boston Executive Business Association on Taxation (1889), which calls it a “grand stride toward wise and just taxation[!]” p. 31.

of assessing and collecting the tax. Whole pages might be filled with such testimony from the various states. I give only the following extracts from the New York reports, as samples :

A more unequal, unjust and partial system for taxation could not well be devised.<sup>1</sup>

The defects of our system are too glaring and operate too oppressively to be longer tolerated.<sup>2</sup>

The burdens are so heavy and the inequalities so gross as almost to paralyze and dishearten the people.<sup>3</sup>

The absolute inefficiency of the old and rickety statutes passed in a bygone generation [is patent to all].<sup>4</sup>

The hope of obtaining satisfactory results from the present broken, shattered, leaky laws is vain.<sup>5</sup>

The system is a farce, sham, humbug.<sup>6</sup>

The present result is a travesty upon our taxing system, which aims to be equal and just.<sup>7</sup>

[The general property tax is] a reproach to the state, an outrage upon the people, a disgrace to the civilization of the nineteenth century, and worthy only of an age of mental and moral darkness and degradation, when the "only equal rights were those of the equal robber."<sup>8</sup>

After such self-criticism nothing more need be said. In comparison with this, the view of the European scientists is moderate, that "a cruder instrumentality of taxation has rarely been devised."<sup>9</sup> And yet, notwithstanding all this criticism, our methods limp along almost unchanged.

## II. *The Development of Taxation.*

In all primitive societies voluntary offerings constitute the first form of common contributions. It is out of the question to levy any direct tax. Every man feels the necessity of upholding the political and military organization by his own personal

<sup>1</sup> First Annual Report of the State Assessors, 1860, p. 12.

<sup>2</sup> Comptroller's Report, 1859.

<sup>3</sup> Assessors' Report, 1873, p. 3.

<sup>4</sup> Assessors' Report, 1877, p. 5.

<sup>5</sup> Report of Commissioners of Taxes and Assessments, 1876, p. 52.

<sup>6</sup> Assessors' Report, 1879, p. 23.

<sup>7</sup> Comptroller's Report, 1889, p. 34.

<sup>8</sup> Assessors' Report, 1879, p. 7.

<sup>9</sup> Leroy-Beaulieu, *Science des Finances* (3<sup>me</sup> éd.) III, 498: "Rarement, dans la fiscalité moderne, on a inventé d'instrument plus grossier."

efforts, but only by these. As society advances and interests diverge, the moral obligation becomes a legal obligation; the voluntary offerings become compulsory contributions. We may sum them up as *trinoda necessitas*, liability to military service, watch and ward, *etc.*; all of them primitive obligations which might occasionally be bought off under the name of poll or capitation tax. The first forced contribution of the individual to the maintenance of the common welfare is always seen in this rude attempt to assess every one according to his ability to bear the common burden, that is, according to his faculty. This faculty is seen in the enforced participation in the administration. But nowhere yet is there any idea of the direct taxation of property. The contribution is personal. The individual's faculty is found in his person, not in his property, because there is practically no property. And the contributions are, for the most part, not regular but spasmodic.

The next stage brings us to the development of indirect taxation. This becomes possible only when property has somewhat increased and the interchange of commodities takes place on a larger scale. The revenues on which the government has hitherto depended — domains, tributes, lucrative prerogatives and fees — are now plainly inadequate. It becomes necessary for the monarch to supplement these by taxing property. But a direct property tax is still out of the question. Public opinion will not yet admit its necessity. The government must endeavor to effect its object covertly. It must go to work in a roundabout way, and hide the taxes in a variety of disguises. Many of them will be declared to be simple returns for government services. But before long the monarch feels able to throw off all disguises and limits the amount of his exactions only by the degree of his rapacity. Thus the fees and tolls change into taxes on exchange and transportation; thus the customs, the "evil duties" and the excises grow apace. Thus the taxes become not only imposts but impositions. This explains why it is so difficult for the idea of direct taxation to force its way into popular recognition. The first manifestations of the tax power are generally merciless and brutal. They are apt to react on the

public consciousness and to stunt the growth of any feeling of obligation. It is not until public morality has so far developed as to introduce more lenient and more refined processes of indirect taxation that we discover a growing willingness on the part of the individual to pay direct property taxes. When this stage — possible often only after centuries of laborious and continued exertion — has finally been reached, we enter upon an entirely new phase in the history of finance. The readiness to share in the public burdens out of one's property presupposes a far higher social ethics and a far more complex society than was possible in the simple conditions when every one was willing to take part in the defence of the village or the repair of the roads. Interests have now become specialized. It needs a far greater sense of civic obligation to submit cheerfully to direct property taxation than was necessary in primitive times for the putting forth of mere personal exertions. Even to-day the full import of this obligation is only inadequately grasped. Until within a few years it was deemed necessary to base the theoretical justification of taxation on fanciful doctrines of contract, of protection, and the like. And even at the present time, those who cheerfully seek to contribute their share to the common burden form the exception, not the rule. But even the imperfect recognition of this duty implies a highly developed political consciousness. The method of taxing every one according to his property is the first rough attempt of a property-owning community (as over against a primitive community) to assess each member according to his relative ability. The introduction of the property tax is a vast step forward in the development of social ethics.

These first property taxes are entirely in harmony with the facts of early industrial life. It is a matter of common knowledge that the early period of every civilization is marked by two chief facts; the almost exclusive preponderance of agriculture and the existence of slavery. As Rodbertus has pointed out,<sup>1</sup> this leads to a fundamental distinction between ancient and

<sup>1</sup> Untersuchungen auf dem Gebiete der Nationalökonomie des klassischen Alterthums, in Hildebrand's *Jahrbücher*, IV, 343 *et seq.*

modern economic theories. In modern civilization we have not only a quantitative division in wealth but also a qualitative difference. That is, not only are there rich and poor, but there are landowners, capitalists, employers, laborers, *etc.* In early civilization there was a quantitative but no qualitative distinction in wealth. All property consisted simply in land and the landowner's household, including slaves and beasts of burden. There was no important capital apart from this landed property, and hence there were no distinct shares in distribution. But Rodbertus errs in confining to Greece and designating by the Greek name an economic system which is characteristic of all early civilizations. It was as true of the slave-holding states in the Union, and of the mediæval manorial system, as it was of the Hellenic civilization. Wherever we find only agriculture and slavery, there we have this inseparable mass of collective property, not yet split up into its constituent parts.

The importance of this for finance lies here: since we have only this general collective property, and since this property consists practically of land and the means to till the land, the direct property tax must take the shape either of the land tax or of the general property tax. These are practically tantamount to each other. For the produce of two given portions of land will vary about in proportion to the value of the land together with the amount of slaves and cattle necessary to till it. Everywhere at first, therefore, the direct property tax is found to be either the land tax (usually the tithe) or the general property tax. The general property tax or its equivalent is well suited to the facts of the time. It is the only practicable and the only just form of taxation at this early period.

But now comes a change in the forms of economic life, — a change that inevitably produces an effect on the public conscience and the accepted ideas of justice. In the first place, with increasing prosperity we find a slow growth of the simpler kinds of personal property. The landowner's family will gradually accumulate money, clothing and luxuries. If the general property tax is still to continue a fair evidence of individual ability to pay, personal property must be taken up into the

assessment lists. And this in fact everywhere occurs. Not only the real estate, but also the growing personal estate is now regarded. At first this personalty will consist of tangible, visible objects not easily concealed, and constituting a fair index of the citizen's prosperity. The existence of this scanty stock of personalty will, however, still be in harmony with the early economic system. It is still the landowner who owns the personal property, and it is still fitting that there should be only the general property tax. The economic system has not materially changed.

The next change, however, inaugurates a widely divergent stage. The primitive family group or manorial system decays. Slavery is gradually broken down by manumission or abolition. The commercial instinct grows stronger, and trade is no longer limited to the interchange of superfluities between adjacent households. What Aristotle decries as the gainful pursuits become common occupations. Capital develops and free laborers appear. The original undifferentiated mass of property splits up into separate parts. The landlord is no longer the property lord. Personal property, in the shape both of productive capital and unproductive wealth, increases at a continually accelerating ratio. Finally, as in our modern industrial system, the movables far outrank the immovables. Realty is completely overshadowed by personalty, both in extent and influence.

The monarch, or public opinion as reflected in the government, now seeks to conform the practice of taxation to this change in economic facts. The general property tax continues, but the assessor tries to make the tax equable by including not only the realty, but also all these new forms of personalty, whether corporeal or incorporeal. Or, in those cases where the original tax was the land tax, it is now supplemented by other taxes, or expanded into a general property tax. The attempt is intelligible and even laudable; for it is simply the manifestation of the ideas of equality and universality of taxation. Personal property must not escape; *ergo*, it must be included in the designation of general property and taxed equally with the real property.



The attempt is laudable, but it is futile. Personalty will evade the most inquisitorial assessor. Wherever tried, the general property tax again resolves itself into the real property tax. History shows us that this has always been the case. The more complex the industrial development, the more inevitably does this process take place, the more surely does the general property tax virtually revert to its primitive form of real property tax. Not alone history, but theory shows us that this must be so. For the general property tax, as we have seen, originated with and is calculated for an economic system where the only property is the collective, indivisible property, where the landowner and capitalist are one. There is one kind of property, and therefore one kind of property tax. But as soon as property is split up into different parts, as soon as there are various kinds of property, just so soon does the single property tax become antiquated and useless. It is not only useless, but it is now absolutely iniquitous. For the attempt to include under one head the gains flowing from widely different pursuits, — pursuits whose number and divergence are limited only by the well-nigh boundless variety of individual capacity, — this attempt to reduce the multiform to the uniform can end only in the virtual exemption of the new forms and a consequent over-burdening of the old. What has been conceived in the spirit of justice develops into an embodiment of injustice. What has been in its origin an attempt to attain equality results in gross inequality.

Because of the evident impracticability of the general property tax, governments now begin to fit their theories of taxation to the economic facts. They abandon the attempt to make the new facts conform to the old theories. As various forms of personalty gradually set themselves free from taxation, the state reasserts the principle of equality. But it now recognizes the existing facts and abandons the fiction of the general collective property. As property splits up into its various elements new taxes are laid, one by one, not on the property but on the separate sources of this new wealth. The old land tax may be retained, but new taxes are imposed in various forms.



Taxes on vocations, on professions, on trade, on commerce, on profits, on interest, on wages and salaries, *etc.*, *etc.*, follow in quick succession, until finally the theories and practice of taxation actually conform to the facts of industrial life. One by one these various sources of wealth drop off from the antiquated general property tax only to receive a new life in these fresh forms. The feeling of equity in the public consciousness can not be put down. What escapes under one form it attempts to reach under another. The theories of taxation cannot long lag behind the facts of industrial life.

### III. *History of the Property Tax.*<sup>1</sup>

In antiquity, direct taxation was treated not as a regular, but as an extraordinary source of revenue. The Athenian direct tax (*εἰσφορά*) as levied in the the time of Solon (B.C. 596) was nominally a classified property tax, but in reality a land tax.<sup>2</sup> With the increase of wealth an attempt was soon made to reach personalty; but the success is entirely conjectural. We simply know that under Nausinicus (B.C. 380) the bases of taxation were not only land and houses, but also slaves, cattle, furniture and money. But it is more than probable that the tax had by this time become a progressive income tax.<sup>3</sup> At all events there is no proof at all that the tax on intangible personal property as such was at all successful.

In Rome the direct tax (*tributum civium*), which was not so much a tax as a compulsory loan to be repaid out of the proceeds of conquest, was levied only to meet extraordinary expenses for which the proceeds of domains (the *vectigalia*) did not suffice. As Rome was at first an agricultural community, the real quiritarian property, alone recognized by law, consisted

<sup>1</sup> The only attempt thus far made to discuss this subject is that of Parieu, *Histoire des impôts généraux sur la propriété et le revenu* (1856). But this is inexact, inadequate, confused and antiquated.

<sup>2</sup> Boeckh, *Public Economy of the Athenians*, book iv, chapter 5.

<sup>3</sup> This explanation of Rodbertus, in Hildebrand's *Jahrbücher*, VIII, 453 *et seq.*, is far preferable to the very involved interpretation of Boeckh (p. 669 of the American edition).

solely of land and the capital affixed to land, like houses, slaves and cattle. These were the *res Mancipi*.<sup>1</sup> But the property tax was assessed only on the land, on the assumption that every acre of land would require a definite quantity of this productive capital.<sup>2</sup> The early Roman property tax therefore was in effect a tax on realty, analogous to the early *εἰσφορά*.<sup>3</sup> With the development of trade and industry in the later days of the republic, the character of property underwent a change. The amount of personalty increased. If the *tributum* was to remain a general property tax it would be necessary to assess also these new forms of property. And in truth the attempt was now made. Not only farming implements, but ships, carriages, money, garments, ornaments, *etc.*, were listed.<sup>4</sup> But it must be remembered that the only personalty assessed still consisted of visible, tangible objects, although the censors had practically unlimited power to take up any property into the tax-list (*census*). There is absolutely no evidence to prove that trading capital proper was ever taxed.<sup>5</sup> And it is useless to speculate what might have been the result during the last period of the republic; for further progress in this direction was checked by the fact that, with one isolated exception, the republic levied no direct property tax at all on the Roman citizens after 167 B.C. Whether the *tributum civium* was again levied during the empire is a moot question. The weightier arguments seem to be on the side of those who maintain that it was never again made use of in its old form.<sup>6</sup>

<sup>1</sup> Mancipi res sunt praedia in Italico solo, tam rustica, qualis est fundus, quam urbana, qualis domus; item jura praediorum rusticorum, velut via, iter, actus, aquaeductus; item servi et quadrupedes, quae dorso colloque domantur, velut boves, muli, equi, asini. Ceterae res nec Mancipi sunt. Ulpian 19, 1. Cf. Gaius I, 120; II, 15-17.

<sup>2</sup> Marquardt, *Römische Staatsverwaltung* (2nd ed.), II, 161.

<sup>3</sup> Except that it was not a graduated tax, and was levied on the value not the produce.

<sup>4</sup> Matthias, *Römische Grundsteuer und Vectigalrecht* (1882), p. 6. The leading ideas of Matthias are translated in Humbert, *Essai sur les finances chez les Romains*, II, 328 *et seq.*

<sup>5</sup> The only one who maintains the contrary is Walter, *Geschichte des römischen Rechts* (3d ed.), I, 271. But the passage of Livy to which he refers (VI, 27) does not bear out his assertion. Walter stands quite alone.

<sup>6</sup> Rodbertus, Hildebrand's *Jahrbücher*, IV, 408-427, and Hegewisch, *Römische*

In the provinces the property tax was nothing but a land tax; either a tax on the value (*tributum soli*), or a tithe (*decuma*), or a ground rent (*vectigal certum* or *stipendium*). In addition to the land tax proper we find the poll tax (*tributum capitis*). In some of the older provinces, where the remains of an enterprising commercial life still existed, this tax probably included the customary imposts, whether a tax on classes or professions or a nominal general property tax.<sup>1</sup>

The Roman property tax was therefore virtually a tax on land and the little productive capital affixed to land. Personality, so far as it was assessed at all, consisted of the meagre tangible objects owned by an agricultural people. The Romans had a general property tax because, as in Greece, there was only one kind of property—the collective property owned by a slave-holding population.

Under the empire industrial society began to differentiate. Caligula (A.D. 37–41) took advantage of this to levy taxes on special classes, above all on carriers, prostitutes and pimps.<sup>2</sup> Trading capital, everywhere the first element to separate itself from the collective mass of property, was reached for the first time by Vespasian (69–79) in the curious tax on the private owners of city urinals and closets.<sup>3</sup> Finally, shortly before Caracalla (211–217) we find a general tax on commercial capital, known henceforth as *aurum negotiatorium*. But what a

Finanzen, p. 1346, maintain its existence. But Savigny, *Vermischte Schriften*, II, 151, 185; Huschke, *Ueber den Census zur Zeit Christi*, pp. 70, 190; Mommsen, *Römische Geschichte*, II, 387; and Marquardt, *Römische Staatsverwaltung*, II, 171, take the opposite view. Dureau de la Malle, in his *Economie politique des Romains*, does not touch this point. The decisive quotation is that from Tacitus, *Annales*, 13, 51, of which Rodbertus' interpretation is strained. The best argument—which has not hitherto been advanced—seems to me to be this: that if the *tributum civile* had continued, it would not have been necessary for Diocletian to introduce into Italy the *tributum provinciale*.

<sup>1</sup> Rodbertus, IV, 364, puts it too strongly when he says that it was only a poll tax. See Marquardt, II, 195.

<sup>2</sup> Suetonius, *Caligula*, 40: "Ex gerulorum diurnis quaestibus pars octava, ex capturis prostitutarum quantum quaeque uno concubitu mereret." Cf. Dio Cassius, LIX, 28.

<sup>3</sup> Known as *foricarii*. Suetonius, *Vespasian*, 16, 23. Cf. for other authorities Walter, *Rechtsgeschichte*, I, 498.

singular commentary it is on the progress of civilization that the first tax on circulating capital should be on a rather filthy occupation, and the first tax on industry one on prostitutes.<sup>1</sup> Caracalla, we are told, conferred the privilege of Roman citizenship upon all the inhabitants of the empire in order to extend to them the now numerous direct taxes, especially the succession and manumission tax.<sup>2</sup> The provincial land tax continued. But it went through the same evolution as formerly the civic direct tax. It became a general property tax. The industrial development, however, had outrun the fiscal theories. It became more and more difficult to reach personalty. More and more barbarous methods were introduced;<sup>3</sup> until finally, as Lactantius tells us in stirring language, torture was applied to the recalcitrant owner.<sup>4</sup> Under Diocletian (284-305) the provincial land tax (known henceforth as *jugatio* or *capitatio terrena*) was introduced into Italy. But at the time of the Theodosian code and the completion of the late fiscal system, we find, not the general property tax,<sup>5</sup> but a vast variety of taxes, indirect and direct. Chief among the latter were those on the profits of trades, professions and artisans,<sup>6</sup> now consolidated into corporations through the petrification of industrial relations.<sup>7</sup> But the attempt to tax personal property by means of a general property tax was abandoned because the original mass of property had disintegrated. The primitive system was

<sup>1</sup> Hildebrand's *Jahrbücher*, V. 315.

<sup>2</sup> At least this is the uncharitable construction put on the act by Dio Cassius.

<sup>3</sup> The municipal decurions, for example, were made personally liable for the taxes levied on their municipalities. Service as decurion became compulsory and hereditary. Fugitive decurions were brought back, like fugitive serfs or military deserters.

<sup>4</sup> De morte pers. 23: *Fora omnia gregibus familiarium referta; unusquisque cum liberis, cum servis aderat; tormenta ac verbera personabant; filii adversus parentes suspendebantur; fidelissimi quique servi contra dominos vexabantur, uxores adversus maritos. Si omnia defecerunt, ipsi contra se torquebantur, et quum dolor vicerat, adscribebantur quae non habebantur.*

<sup>5</sup> The poll tax (*capitatio plebeia* or *humana*) levied on the serfs (*coloni*) was practically a property tax because it was paid by the landowner.

<sup>6</sup> Known as *chrysargyrum*, *vectigal artium*, *pensio auraria* and *aurum lustrale*. Cf. Levasseur, *Histoire des classes ouvrières en France*, I, 72-78.

<sup>7</sup> Cf. Wm. Adams Brown, *State Control of Industry in the Fourth Century*, *POLITICAL SCIENCE QUARTERLY*, II, 1 (September, 1887), pp. 494-513.

abolished and was replaced by methods more or less analogous to modern European practice.

During the middle ages the same development can be noticed. In the early period, after the disruption of the Roman empire, there were no taxes at all. The primitive Teutonic idea forced its way through in the feudal system. The contributions originally devoted to public purposes became the private possessions of feudal nobles and over-lords. The public tax became private property.<sup>1</sup>

In the early feudal system land was practically the only form of wealth, just as it was the basis of the political fabric. In England the feudal payments (*scutages*, *carucages*, and *tallages*) gradually became land taxes, just as the Saxon *shipgeld* and *danegeld* were land taxes. But from the twelfth and thirteenth centuries onward, the growth of industry and commerce in the towns led to an increase of personalty or movables. It became necessary to devise some new method of reaching the ability of the citizens. The only way out of the difficulty in England, as on the whole continent, was a combination of the taxes on lands and movables through the general property tax.

The mediæval towns were the birthplace of modern taxation. Every inhabitant was compelled to bear his share of the local burdens, his proportion of the scot and the lot. The scot or tax was almost from the very outset the general property tax combined with the subordinate poll tax, exactly as in the earliest days of the New England colonies. The town, as such, generally paid its share of the national burdens in a lump sum, the *firma burgi*. But this lump sum was always distributed among the townsmen in proportion to the property of each.<sup>2</sup> On the

<sup>1</sup> Cf. for details Clamageran, *Histoire de l'impôt en France*, I, 115; and Vuitry, *Études sur le régime financier de la France avant la révolution*, I, 420.

<sup>2</sup> Numerous examples may be found in Madox, *Firma Burgi*, 281 *et seq.* In one town, under Edward III, each man is "taxandus et assidendus juxta quantitatem bonorum et catallorum suorum ibidem." In another town the tax "debet assideri proportionaliter juxta quantitatem bonorum suorum," *etc.* For London, where each freeman paid the general property tax as *partem de bonis suis* or *partem catallorum*, see the examples in *Munimenta Gildhallae Londoniensis*, *Liber Albus* I, 592 *et seq.* For full details as to the method of assessment *tempore* Edward II, see *Liber Custumarum*, 193 *et seq.*, 568 *et seq.*

continent it was the same. In the German towns the taxes were at first levied only on land. But at the close of the twelfth century, the land tax had already been merged into a general property tax—or, as it was called, the tax on property *in possessionibus, agris, domibus, censibus et rebus quibuscumque*. In other towns it was called simply a tax of so much *per* or *pro bonorum facultate*.<sup>1</sup> In most of the German towns the general property tax was combined with the poll tax.<sup>2</sup> In the Swiss cantons the tax was even called the *Habs und Kopfsteuer*.<sup>3</sup> The only distinction between England and the continent was that in England the property tax for centuries the sole local tax, while in France and elsewhere we find in addition the local excises or *octrois*. But at the same time the general property tax was the measure of a man's capacity.

The general state taxes followed in the wake of the local taxes. Already in 1166 a tax on movables was levied throughout almost all Europe for the purposes of the crusades. But the first real general property tax, into which the contributions from the land soon merged, was introduced in 1188 on the occasion of the second crusade. From this time on the grants of rents and mortgages (*bus et mobilibus*, or, as they were sometimes called, *bus et catallis*) became more and more common, and superseded the older methods of securing mortgages. In 1201 a fourth (1193). But from 1290 on the king began to tax the nobility and clergy only two-thirds and the commons. In 1334 the proportion was one-third and the tenth. This meant a higher no-

<sup>1</sup> Zeumer, *Die deutschen Städtesteuern* . . . in *Monatsschrift für Geschichte und Wissenschaften*, pp. 86-89.

<sup>2</sup> Christian Meyer, *Augsburger Stadtbuch*, pp. 75.

<sup>3</sup> Schonberg, *Finanzverhältnisse der Stadt Basel*, S. 134.

<sup>4</sup> Blumer, *Staats- und Rechtsgeschichte der Schweiz*, 295 *et seq.*

<sup>5</sup> Sinclair, *History of the Public Revenue*, I, 1.

than for land. But in reality there was a substantial equality of taxation, because the assessment of chattels was not strictly enforced. This is apparent from the dissatisfaction shown with the tax of 1275, when the people were assessed *ad unguem, i.e.* up to the full value of their movables.<sup>1</sup> In the succeeding grants the old easy practice was resumed. As the tax on lands, however, could be levied on actual rents, it was not apt to be so leniently assessed. Thus a substantial equality was probably reached.

Just as the tallages merged into the fifteenths and tenths in England, so in France the feudal charges on the land developed into the general property tax, which however still retained the old name *taille*. The ordinances of 1254–56 attempted to regulate the assessment, and provided that movables should be charged only half as much as immovables.<sup>2</sup> France thus endeavored to attain by law what England effected by custom. During the fourteenth century the *taille* came to be the chief direct tax, and in 1439 it was made a permanent annual tax. In Germany also the imperial and state direct taxes, in so far as there were any, took the form of the general property tax. The *Bede*,<sup>3</sup> the *gemeiner Pfennig*,<sup>4</sup> the *Landschoss*,<sup>5</sup> the *Landsteuer*,<sup>6</sup> etc., all followed the example of the local property tax.

In the Italian republics the commonwealth was at first supported by the general property tax. In Milan, under the name *stima e catastro de beni*, it is found as early as 1208, and afterwards was levied with such severity that the assessment book was known as the *libro del dolore*.<sup>7</sup> In Genoa it was called

<sup>1</sup> Dowell, History of Taxation and Taxes in England (2d ed.), I, 68.

<sup>2</sup> Clamageran, Histoire de l'impôt en France, I, 264.

<sup>3</sup> At first a feudal land payment; Hüllmann, Deutsche Finanzgeschichte des Mittelalters, p. 133.

<sup>4</sup> Lang, Historische Entwicklung der deutschen Steuerverfassungen seit der Karolinger, p. 182.

<sup>5</sup> Schmoller, Die Epochen der preussischen Finanzpolitik, in *Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft*, I, 35, 42.

<sup>6</sup> Hoffmann, Geschichte der direkten Steuern in Baiern vom Ende des XIII. Jahrhunderts, pp. 11, 17, 39.

<sup>7</sup> Carli, Relazione del censimento dello stato di Milano, in Custodi's Scrittori classici italiani, parte moderna, XIV, 184, 185.



*colletta*.<sup>1</sup> In Florence it was known as *estimo* and played an important role in politics.<sup>2</sup> And finally we find in the Netherlands from the earliest times the general property tax known as the *schot* or the tenth, etc., on *bezittingen* (possessions) a tax of especial interest because it served as the model of a general property tax in the New Netherlands.

The general property tax thus existed throughout all Europe. It was moderately successful because well suited to the conditions. Although involving an inquisitorial search into every detail of the scanty mediæval stock, as can readily be seen from the detailed schedules of assessment still in existence, the tax levied chiefly on tangible, physical objects not capable of concealment. With the exception of countries like England where the tax was emasculated by the system of *assessors* it resulted on the whole, during this early period, in a tax fairly proportional to the individual faculty of taxation a general property tax because there was a very close correlation of property.

Before long a change set in. In England the *assessors* changed from a percentage to an apportionment. Each locality had to raise a definite lump sum. But the system of assessment fell into disuse. Each town made its own arrangements and treated personal property as a special category that the total product of the tenth annually decreased. The consequence was that the crown had to supplement the old tax with a part of the crown to supplement the old tax with a property tax, called the subsidy. The result was a failure. Finally, in 1514, the first general property tax as a tax of sixpence in every pound of rate was afterwards fixed at four shillings eight pence on goods. But this was precisely the same development as the

<sup>1</sup> "Le imposte straordinarie si possono di que una sola, la colletta." Canale, *Storia dei Genovesi*.

<sup>2</sup> Villani tells us that it was levied on "cio c'è mobile e di guadagno." *Istorie fiorentine fino al 1293*, p. 26 of Milan edition of 1803.

<sup>3</sup> Engels, *De Geschiedenis der Belastingen* f



At first really a percentage tax, it was soon practically converted into an apportioned tax of a stated lump sum. No assessment of the districts took place, but every locality was supposed to pay the same sum year after year. All the growing wealth thus entirely slipped out of the lists. Exemption after exemption was made, and personal property was so loosely assessed that the total yield continually declined. The most arbitrary methods were employed. Only the old "subsidy-men" were taxed; allowances were made in a multitude of cases; and the assessments of personalty were so low and partial that the subsidy became a perfect farce. As Bacon said, "the Englishman is master of his own valuation."<sup>1</sup> Sir Robert Cecil stated in 1592 that there were not five men in London assessed on their goods at £200; and Sir Walter Raleigh stated in 1601 that "the poor man pays as much as the rich."<sup>2</sup> Although nominally a general property tax, the subsidy thus came to be levied chiefly on the land, and became an unequal land tax; so unequal that it finally disappeared in 1663.

Under the Commonwealth an attempt was made to revive the general property tax, under the name of commonwealth monthly assessments.<sup>3</sup> The improvement was so marked that the old subsidies were completely abandoned and replaced by the assessments. But the reform was short-lived and the assessments of personal property continually diminished. Sir William Petty, after complaining of this, nevertheless held, as do some of our rural legislators to-day, that "assessments upon personal estates, if given in as elsewhere upon oath, would bring that branch which of itself is most dark to a sufficient clearness."<sup>4</sup> After the Revolution the tax was levied as the so-called property tax. By its terms<sup>5</sup> it was assessed on the persons possessed of personal property, real estate or public offices or positions of profit.

<sup>1</sup> And, he adds, "the least bitten in purse of any nation in Europe."

<sup>2</sup> Report on Public Income and Expenditure, 1869, II, 415.

<sup>3</sup> Tayler, *The History of the Taxation of England*, p. 21.

<sup>4</sup> Petty, *Verbum Sapienti*; or . . . the method of raising taxes in the most equal manner, p. 17. (Appended to the *Political Anatomy of Ireland*, edition of 1691.)

<sup>5</sup> 4 William III, cap. 1.

And it was at first a percentage tax. But the yield decreased so enormously that Parliament in 1697 fixed the sum it should produce, i.e. it became an apportioned tax of a fixed amount. Moreover, the difficulty of assessing personalty, the impossibility of reaching intangible property were not apparent that the tax became almost exclusively a land tax. The name itself was first applied in 1697. The "annual land tax" of England (which since 1798 has become simply a reasonable rent charge on land) was thus intended to be a general property tax and for a long time continued to be so. The provision taxing personal property continued to be in the statute book until 1833, and the clause taxing public offices and positions of profit was not finally repealed until 1845, a year before its repeal it had yielded the enormous sum of £1,000,000. Such was the ludicrous result of the attempt to maintain the old æval customs. The general property tax, which has since been as a land tax, reverted in name as well as in fact to its original form.

In other countries the history of the property tax is different. In France the *taille* was of two kinds, the *taille réelle* levied in name as well as in fact only on lands and the *taille personnelle*, nominally a general property tax in the *pays d'élection*, i.e. the greater portion of the country. In reality the *taille personnelle* was levied only on the households of the non-nobles (*roturiers*), and it was not until 1793 that a land tax like the *taille réelle*; for the wealthy soon acquired the same privileges as the nobles. It tells us that the *taille* as a tax on movable property was levied on the poorest classes.<sup>2</sup> Sully, indeed, endeavored to restore the principles of the general property

<sup>1</sup> Adam Smith, *Wealth of Nations*, book v, chap. 2. In the original tax, it was intended that stock should be taxed in proportion to its value (Rogers' ed. II, 553.)

<sup>2</sup> Report of the Commissioners of Inland Revenue.

<sup>3</sup> "En résumé la taille était un impôt territorial levé sur les terres les plus pauvres du royaume, et une taxe personnelle levée sur les classes les moins riches de la société." — *op. cit.* 2<sup>e</sup> édition.

been made to remedy its defects by joining to it an income tax. Even thus much hardship and inequality ensue.<sup>1</sup>

In Italy the development of the property tax can be clearly studied in Florentine history. The *estimo*, at first assessed with comparative equality, soon became honeycombed with abuses. Personalty slipped out of the lists, the rich bankers entirely escaped, and the whole load of taxation fell with crushing force on the small owners, *populo minuto*. Hundreds were completely ruined and compelled to seek refuge in exile.<sup>2</sup> The discontent became so loud that after threats of revolution and disorder the *estimo* was finally supplanted in 1427 by the new tax, *catasto*, to be levied on the personalty of traders and bankers as well as on realty. Machiavelli gives us an interesting account of the opposition of the nobles, who were at the same time the great financiers.<sup>3</sup> But the new general property tax went the way of its predecessors. When we read of the subterfuges and evasions, of the strenuous efforts on the part of the state to compel the listing of personalty and of the dismal failure of the attempts, we seem to be reading the reports of American commonwealth assessors or comptrollers for 1889. The history was precisely the same. In 1431 only fifty-two persons paid the tax on trade capital, although the amount of such capital must have been immense. And in 1495 the tax was made in name, what it had long been in fact,<sup>4</sup> a tax on immovables only. Personalty, as such, was henceforth legally exempt. The general property tax had again become a land tax.

Throughout all Europe the local property tax has become a tax on real estate. In England the whole system of local taxation is based on the poor rate, according to the statute of 1601 which mentioned as liable to the tax not only occupiers of lands,

<sup>1</sup> A complete collection of all the cantonal tax laws can be found in Böhmert, *Arbeitsverhältnisse und Fabrikeinrichtungen der Schweiz*, I, 128-200. Cf. also Cohn in *POLITICAL SCIENCE QUARTERLY*, IV, 1 (March, 1889), p. 50.

<sup>2</sup> Cf. Léon Say, *Les solutions démocratiques de la question des impôts*, I, 209 *et seq.*, especially pp. 222, 229. He gives no references. For a full history, see Baer, *Il catasto fiorentino nel secolo XV*; *Nuova Antologia*, vol. 17 (1871).

<sup>3</sup> History of Florence, IV, 14 (vol. i, p. 181 of Detmold's translation).

<sup>4</sup> Canestrini, *L' imposta sulla ricchezza mobile ed immobile*, I, 108, 115, 321, *etc.*

but a relic of mediævalism. In substance, although not in name, it has gone through every possible phase of its development. Any attempt to escape the shocking evils of the present by making it a general property tax in fact as well as in name is foredoomed to failure. The general property tax is impossible in any complicated social organism. Mediæval methods cannot succeed amid modern facts.

#### IV. *Theory of the Property Tax.*

While it is generally confessed that the property tax in the United States is a failure, it is sometimes contended that if thoroughly executed it would be a just tax. The theory of the general property tax, as set forth in almost all our state constitutions, is held to be correct in principle. Is this true?

In the first place we must disabuse ourselves of the idea that property, as such, owes any duty to pay taxes. The state has direct relations not with property, but with persons. It is the individual who, from the very fact of his existence within the state, is under definite obligations towards the state, of which the very first is to protect and support the state. For the state indeed can exist without the particular individual, but the individual cannot exist without the state. The individual must support the state, not because the state protects him, but because his life is possible only within the state — unless indeed he prefer stateless savagery. Every civilized community professes to tax the individual according to his faculty, his ability to pay. His ability may indeed be measured by his property or by any other standard. But in the last instance it is the individual who is taxable. It is he who owes the duty.

But is property the true test of ability? In primitive communities to a certain extent it is. Every freeman is a proprietor. All are supported by the produce of the land. The comparative equality of wealth gives a comparative equality of opportunity. The finer differences in ability to pay are not yet recognized. In the early stage of society property is indeed a rough test of ability.

the taxation of "laborers, artificers and handicraftsmen"; and goes on to say :

And for all such persons as by the advantage of their arts and trades are more enabled to help bear the publick charge than common labourers and workmen, as butchers, bakers, brewers, victualers, smiths, carpenters, taylors, shoemakers, joiners, barbers, millers and masons, with all other manual persons and artists, such are to be rated for returns and gains proportionable unto other men for the produce of their estates.<sup>1</sup>

In other words, not only property but product was taken into account. So in Plymouth colony it was provided "that all persons bee rated according to their goods, faculties and personall abillities," the "vizable estate at a fixed valuation, but faculties and personall abillities at will and doome."<sup>2</sup> In Connecticut and Rhode Island the law was precisely the same and the tax was known as the "assessment on the faculty."<sup>3</sup> The profits of certain classes were taxable like the produce of estates. We see therefore how wide of the mark is the recent statement that the system which the Americans instinctively adopted was "the equal taxation of property, the non-taxation of labor."

In the colonies indeed these laws mark only the first faint attempts to substitute product for property as the basis of taxation. Later on the distinction was lost sight of and the attempt abandoned. But in Europe the development continued and the whole tax system changed from property to product. Thus the taxes on land, houses, wages, salaries, interest, profits, *etc.*, gradually supplanted the property tax and formed a more or less complete system based on product. Very recently again the basis of taxation in modern societies has shifted from product to income. But the reasons of this change and the serious limitations on the practice of the income tax must be

<sup>1</sup> Colonial Records of Massachusetts Bay, II, 173; II, 213; III, 88. Cf. Charters and General Laws of Massachusetts Bay (1814), p. 70.

<sup>2</sup> Records of the Colony of New Plymouth (Pulsifer's ed.), IV, 102, law of 1643; VI, 22, court orders of 1689.

<sup>3</sup> Connecticut Colonial Records, I, 559, law of 1650. Rhode Island Colonial Records, II, 510. Cf. the law of 1649 in New Haven; Colonial Records of the Colony and Plantations of New Haven, I, 494.

deferred to another article. The point to be noticed here is that throughout all Europe the mediæval basis of taxation — the mass of property — was utterly abandoned, because it no longer responded to the equities. The property tax is theoretically unjust because property no longer measures the ability to pay; because property was replaced by product as an index to faculty.

This is the reason of the failure of the property tax. It has indeed been contended by some, as *e.g.* by President Walker, that the fatal defect of the property tax consists in its constituting a penalty on savings.<sup>1</sup> This is inadequate. For the same objection would attach to any tax based on income in so far as income exceeds expenditures. An income tax on the surplus is equally a tax on savings. There is no difference in this respect between a property tax and this portion of an income tax. The only logical conclusion from this objection to the property tax is a tax on expense. If we wish to avoid taxing savings, we must tax only expenditure. And yet President Walker correctly opposes the expense tax as the most unjust of all. The property tax is unjust, not because it is a penalty on savings, but because property is no longer a measure of ability.

There is not a single scientist of note who upholds the property tax as the sole or chief direct contribution. Some of the German writers on finance indeed advocate a general property tax, but simply as a very subordinate supplement to all existing direct taxes,<sup>2</sup> and mainly as an adjunct to the income tax in order to tax income from property more than professional or individual earnings. But the German writers overlook the fact that the same result may be attained by making a difference in the rate of the income tax, as in Italy. Above all, the continental countries have fortunately been so long exempt from the property tax that the European writers have given it very little attention, have utterly forgotten its shortcomings, and have failed to analyze its inherent defects.

<sup>1</sup> POLITICAL SCIENCE QUARTERLY, III, 1 (March, 1888), p. 3.

<sup>2</sup> Cf. Gustav Cohn, Finanzwissenschaft, § 475: "Neben der Erwerbsbesteuerung bleibt für die Besitzbesteuerung heute nur ein beschränkter Raum übrig."

One other argument is sometimes advanced in favor of property tax, *vis.*, that under any other system unproductive property, like jewelry, art collections, unimproved lands, would be exempt. This consideration is of little weight at its best, does not justify a general property tax, but a tax on special kinds of property. Entirely apart from the impossibility of taxing art collections, or the impossibility of discovering jewelry, or the utter insignificance of this kind of property when compared with the total national wealth, the argument has one fatal defect. The conversion of capital into unproductive wealth of itself destroys the revenue, which is the true fund for the payment of taxes. It is undeniable that if the property were productive and if the tax were levied on the product the owner would pay a larger sum. But on the other hand his revenue would be still greater and his amount above the tax would constitute an ever-increasing fund. To leave unproductive property free may seem to lessen the share of the government, but seems to be but justice to the individual. His renunciation of the property diminishes *pro tanto* his tax-paying ability. But that the exemption of non-productive property is a principle in so far as vacant lands and parks are concerned is an error that can be rectified by a tax on all real estate. The minute defect when compared with the utter insignificance of profits and earnings derived from personal occupations. If there are any evils arising from a general property tax, they are infinitesimal and the evils inseparable from its existence.

#### V. Conclusion.

We may now sum up our conclusions, of incidence to a future paper. The fact that the main source of public revenue is shown from the triple standpoint of history, theory

*Historically*, the property tax was not  
Far from being an original idea which



tively adopted, it is found in all early societies whose economic conditions were similar to those of the American colonies. It was the first crude attempt to attain a semblance of equity, and it at first responded roughly to the demands of democratic justice. In a community mainly agricultural, the property tax was not unsuited to the social conditions. But as soon as commercial and industrial considerations came to the foreground in national or municipal life, the property tax decayed, became a shadow of its former self and ultimately turned into a tax on real property, while professing to be a tax on all property. The disparity between facts and appearance, between practice and theory, everywhere became so evident and engendered such misery that the property tax was gradually relegated to a subordinate position in the fiscal system and was at last completely abolished. All attempts to stem the current and to prolong the tax by a more stringent administration had no effect but that of injurious reaction on the *morale* of the community. America is to-day the only great nation deaf to the warnings of history. But it is fast nearing the stage when it, too, will have to submit to the inevitable.

*Theoretically*, we have found that the general property tax is deficient in two respects. First, the theory presupposes that there is an ascertainable general property—a definite surplus of assets over liabilities. In primitive social conditions this is true. There is a composite mass of property, because there is no industrial differentiation. But in the modern age property is split up into a hundred elements. If we attempt to tax each element separately it is often impossible to decide from which category deductions are to be made for indebtedness. An individual, *e.g.*, owes more on his book accounts than is due to him. Granting that he therefore pays no tax on his book accounts, shall he be permitted to deduct this surplus of debt from the value of his real estate? This is manifestly inadmissible. And yet unless this is done he is taxed not on his property but on his surplus of debt; not on his real assets, but on what he owes. The theory of the property tax is not carried out. And it cannot be carried out because the conditions of



the theory fail. The general mass of property has disappeared, and with it vanishes the foundation of the general property tax.

Secondly, the property tax is faulty because property is no longer a criterion of faculty or tax-paying ability. Two equal masses of property may be unequally productive, and hence unequally affect the margin of income from which the public contributions are paid. The standard of ability has been shifted from property to product. Not the extent but the productivity of wealth constitutes the test. And since revenue is a better index than wealth, the vast class of earnings derived not from property but from exertion is completely and unjustifiably exempted by the taxation of property alone. The theory of the property tax again fails because the conditions of the theory have disappeared.

*Practically*, the general property tax as actually administered to-day is beyond all peradventure the worst tax known in the civilized world. We shall see in another paper that even the much decried income tax, both in the United States and in Europe, was and is, however defective, infinitely superior in practice. The property tax to-day, because of its attempt to tax intangible as well as tangible things, sins against the cardinal rules of uniformity, of equality and of universality of taxation. It puts a premium on dishonesty and debauches the public conscience. It reduces deception to a system and makes a science of knavery. It presses hardest on those least able to pay. It imposes double taxation on one man and grants entire immunity to the next. In short, the general property tax is so flagrantly inequitable that its retention can be explained only through ignorance or inertia. It is the cause of such crying injustice that its abolition must become the battle cry of every statesman and reformer.<sup>1</sup>

EDWIN R. A. SELIGMAN.

<sup>1</sup> I do not wish to be understood as favoring either the exclusive taxation of real estate or the single tax on land-values. Even as the sole direct taxes, these forms are utterly inadequate, as will be shown in a succeeding essay.

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## THE MORTGAGE EVIL.<sup>1</sup>

IT is in some respects fortunate, and in others unfortunate, that nearly all economic questions become involved in politics. That such questions are on this account more generally considered and more carefully studied is apparent, and that they are for the same reason subjected to misrepresentation and fallacious argument is equally certain. Whenever a well-grounded economic proposition is advanced as a political argument, the party against which it militates usually meets it on every possible line of defence, so that the sum of their reasoning acquires a resemblance to the answer in the celebrated kettle case. The common features of the reply are these: 1. The facts alleged do not exist; 2. The condition resulting from the facts is not injurious but beneficial; 3. The injurious results are not due to the acts or principles of the party in power. Not infrequently the three lines of defence are all followed in one article, overwhelming, bewildering or amusing the reader according to his knowledge of the subject and his faculty of logical perception. The extent and economic significance of Western mortgages—particularly farm mortgages—is one of these questions which has become of political importance on account of its connection with the tariff question, and which has already advanced into all three of the stages of controversy mentioned. It is the object of this paper to discuss the extent and effect of mortgage indebtedness in parts of the West and to endeavor to point out some features of it which have hitherto been entirely overlooked or barely noticed.

In the collection of facts the principal sources of information are of necessity the bureaus of statistics that have been in operation in several of the Western states for some years past. One

<sup>1</sup> [*Cf.* article on Farm Mortgages in *POLITICAL SCIENCE QUARTERLY* IV, 3 (September, 1889), p. 433. Eds.]

of the first acts of the Indiana bureau after its organization in 1879 was to request of the county officials statements of the numbers and amounts of mortgages recorded and satisfied in each year from 1872 to date. The returns were not full. Twenty-nine of the ninety-two counties responded in time for the first annual report. In the following year nine more counties were heard from, and the next report included them. The figures are as follows for private real-estate mortgages, exclusive of school-fund mortgages in which the mortgagee is the state :

TABLE I.

Year ending	Record of 29 counties. (Report of 1879, p. 334.)			Record of 38 counties. (Report of 1880, p. 227.)		
	Mortgages.	Satisfactions.	Increase.	Mortgages.	Satisfactions.	Increase.
June 1, 1873. .	\$6,522,244	\$3,162,936	\$3,359,308	\$7,165,791	\$3,606,496	\$3,559,295
“ 1874. .	7,254,648	4,025,402	3,229,246	8,032,515	4,504,922	3,527,593
“ 1875. .	8,620,521	4,180,230	4,440,291	9,659,391	4,920,440	4,738,951
“ 1876. .	7,656,158	4,472,807	3,183,351	8,793,096	5,331,587	3,461,509
“ 1877. .	7,595,147	3,577,201	4,017,946	8,749,053	4,390,030	4,359,023
“ 1878. .	6,216,946	3,184,253	3,022,693	7,423,253	3,807,168	3,616,085
“ 1879 <sup>1</sup> .	3,342,107	2,095,970	1,246,137	4,478,907	2,802,105	1,676,802
	47,207,771	24,698,799	22,508,972	54,302,006	29,362,748	24,939,258

No attempt appears to have been made to continue this record for the next two years, but from 1882 there has been an annual report, the aggregates of the returns being as follows :

TABLE II.

*Record of Private Real-Estate Mortgages (exclusive of School Fund) as reported, 1882-1888.*

	Mortgages.	Satisfactions.
Year ending June 1, 1882 . . . . .	\$8,623,459	\$4,749,236
“ “ “ 1883 . . . . .	18,457,942	6,816,903
“ “ “ 1884 . . . . .	78,224,311	3,693,439
“ “ “ 1885 . . . . .	6,532,496	4,292,907
“ “ “ 1886 . . . . .	5,661,032	3,074,920
“ “ “ 1887 . . . . .	4,617,659	2,545,480
“ “ “ 1888 . . . . .	4,604,999	2,786,399

<sup>1</sup> For five months only, in part of the counties.

A glance at these reports shows that either there are inaccuracies in some of them or there is a most extraordinary variation in the mortgage business, and careful inspection reveals the sources of error. Take for example the startling figures for 1884. On examination of the detailed statement by counties, it will be observed that in each of the three counties of Clark, Jefferson and Scott the mortgages recorded exceed \$16,000,000. These three counties are contiguous and are crossed by a branch of the O. & M. railroad, which in that year filed its refunding mortgage of \$16,000,000 in these counties, and this amount was erroneously included by the county officials in their reports. A like error occurs in Delaware county on account of the record of the general consolidated mortgage of the C. C. C. & I. road, amounting to \$12,000,000. A third instance appears in Fulton county, where the T. H. & L. railroad extended its line in 1884 and recorded its first mortgage of \$5,000,000. Hence \$65,000,000 of the increase is easily disposed of. The second source of error is the inclusion in the tables of a number of counties from which only one side of the account (almost invariably the mortgages recorded) is reported, and of course these cannot be retained in an estimate of the relative amounts of recorded and satisfied mortgages. It must be noted also that the number of counties whose reports are included varies from year to year. Eliminating all these vitiating factors from the reports, the record for these seven years stands as follows :

TABLE III.  
*Corrected Mortgage Record, 1882-1888.*

	No. of counties re- porting.	Mortgages.	Satisfactions.	Increase.	Estimated increase for entire state.
Year ending June 1, 1882	26	\$6,407,812	\$3,749,236	\$2,658,576	\$9,407,276
“ “ “ 1883	42	10,220,721	6,816,903	3,403,818	7,455,956
“ “ “ 1884	33	6,565,696	3,693,439	2,872,257	8,007,496
“ “ “ 1885	31	6,038,549	4,292,907	1,745,642	5,180,612
“ “ “ 1886	26	5,016,128	3,074,920	1,941,208	6,868,904
“ “ “ 1887	23	3,963,679	2,545,480	1,418,199	5,672,812
“ “ “ 1888	21	3,672,872	2,786,399	886,473	3,883,596
					\$46,476,652

In the report for 1880, covering the seven years from 1874 to 1879, the errors noted above were avoided, so that we have reliable bases for calculation in the reports for 14 years, as shown in Tables I and III. The next question is: On what principle should the estimate for the entire state be made? From inspection of the detailed statements the following facts are deduced: 1. Except in rare instances the mortgages recorded exceed the satisfactions in every county in every year. 2. The increase of mortgages is always greatest in counties whose real-estate valuation is greatest, but not in any fixed proportion. 3. The counties reporting are as a rule those in which the real-estate valuation is below the average. The important counties of Marion, Tippecanoe, Vigo and Vanderburgh do not appear at all, and other wealthy counties only occasionally. The reason of this is that the law does not compel reports and the county officers who comply with it are naturally those in whose counties the business is lightest and most easily summarized.

From these facts it is evident that an estimate by real-estate valuation would be too high, and also that an estimate by the number of counties included, averaging each the same, would be too low. The difference in the results obtained by these two methods is much greater than might be expected. For example, the thirty-eight counties reported in 1880 reported \$153,809,208 out of a total real-estate valuation of \$400,000,000 according to the appraisement of the state board of assessors. That is to say, the report shows the returns for only twenty-six per cent of the counties, but only twenty-six per cent of the real-estate valuation. As it is desirable to keep within the limits of certainty, I have used the more conservative estimates for the entire state given in Table I, which are based on a computation by proportion of the counties reported to the whole number of counties. Possibly, too conservative a method; because, as is frequently objected, the character of the returns, there are some satisfactions of mortgages, partial payments, that do not appear of record. However, this is not so serious as it might seem, because the proportion of such cases is small, and the

closures, new loans, *etc.* there is a constant "clearing up" of titles, in which mortgages really satisfied in past years are made to appear as satisfied in current ones. The average therefore is fairly accurate.

On this basis the increase of mortgages in the first period of seven years (Table I) for the entire state was \$60,379,232; and during the second period of seven years (Table III), \$46,476,652; or a total in fourteen years of \$106,855,884; and this amount is an absolutely safe minimum. What relation it bears to the total existing volume of real-estate mortgages can only be conjectured. Perhaps it is one-half—in my opinion less—but possibly more. There are no available means by which the question can be determined. It is certain that this much exists and that, at the rate of seven per cent, the people of Indiana are annually paying \$7,480,000 of interest on this indebtedness.

To reach an appreciation of the significance of this growth of mortgage indebtedness another factor must be taken into consideration, and it is one to which statisticians have paid very little attention. It is scarcely more important to know what proportion of mortgages were satisfied than it is to know how they were satisfied; because under the laws a mortgage is satisfied by foreclosure and sale of the property as well as by the payment of the debt. Of course the volume of debt is reduced in both cases; but the extent of the reduction by payment is proportional to the prosperity of the country, and the extent of the reduction by foreclosure is proportional to its financial embarrassment. Payment means that enough wealth has been added by the production of the land or from external sources to extinguish the debt. Foreclosure means that the margin of value in the land above the debt has been swallowed up by the debt and that the debtor is so much the less able to meet his unsecured liabilities. Beyond this influence towards general embarrassment in business, there is perhaps no serious detriment to the state if the mortgagee be a resident; but, considering the total volume of foreclosure, where the mortgagees are non-residents it is apparent that the money brought in by



loans has in some way disappeared, and that the financial parasite which before sucked the blood is now swallowing the flesh. Unquestionably the payment of all the mortgage indebtedness of the state would be a public benefit, and the foreclosure of all existing mortgages would be an immeasurable calamity.

In the utter absence of ordinary statistical information on this subject, it is impossible to determine conclusively the proportion of satisfactions by foreclosure to those by payment, but the following facts will aid in attaining a correct conception of it. Prior to 1879 a very considerable part of the foreclosures in Indiana by non-resident mortgagees was done in the United States courts, because it was in some respects more convenient and because those courts were believed to be less subject to local bias on controverted points, if any arose. I have therefore made a full abstract of the foreclosure decrees on the judges' dockets of those courts, taken by thirteen foreign companies engaged in the loan business during the years 1878, 1879, to ascertain the actual amount of foreclosure by their result is as follows:

TABLE IV.

*Foreclosures in United States Courts for Indiana*

Company	1878.	1879.
Northwestern Mutual Life Ins. Co.	\$135,537.04	\$20,169
George P. Russell, Trustee	120,000.71	00,13
Fitzgerald, Trustee	3,324.31	13.1
Providence Ins. Co.	9,200.00	
Charter Oak Ins. Co.	7,771.66	
Traveler's Ins. Co.	35,977.01	71
Pharmas Mutual Loan and Trust Co.	0,404.45	1
Phoenix Mutual Life Ins. Co.	140,742.61	1
Union Mutual Life Ins. Co.	8,730.02	
Jonathan Edwards, Trustee	102,711.68	
U.S. Mortgage Co.	80,115.68	
Conn. Mutual Life Ins. Co.	4,530.00	
Atina Life Ins. Co.		
Totals	\$703,971.80	

The decrease of foreclosure in 1879 is not an absolute decrease, but was due

class of litigation to the state courts. The forcing of residents of outside counties to come to Indianapolis to defend foreclosure suits became so oppressive that a law was passed by the state legislature (approved March 15, 1879) requiring foreign companies to foreclose in the counties where the mortgaged land was located, on penalty of forfeiting the right to transact business in the state. No new suits were brought thereafter in the United States courts, and the figures for 1879 and 1880 represent only the results of cases theretofore pending. As nearly as I can estimate from the opinions of attorneys representing these companies, less than one-half of their foreclosure on the average was done in the United States courts, the amount varying with different companies. Many attorneys preferred the state courts because the pleadings were less voluminous, the disposal of the cases was more expeditious, and the expense was less. The last-named was the most important consideration, because the mortgagee usually bought in the property for the full amount of judgment and costs and thereby paid the expense of the foreclosure. The thirteen companies named were probably foreclosing at the rate of \$1,500,000 per annum at that time; and in my opinion, as well as in that of several attorneys with whom I have consulted, the total volume of foreclosure in the state was at least one-half the total volume of satisfactions, which in that period was about ten millions a year.

A similar conclusion will be reached from another line of facts. On account of the legislation mentioned and on account of losses on foreclosures (which will be explained hereafter), several of these companies have discontinued loaning in this state and have closed up existing business. From the president of one of these, the Phoenix Mutual, I learn that it "loaned a little over a million dollars in Indiana and foreclosed on fifty-three per cent of it." The business of George P. Bissell, Trustee, presents much the same result. Out of 290 loans made, of which only seven are now living, there were 124 foreclosures, that is to say, forty-three per cent of the whole number of mortgages. This, however, does not show the full extent of foreclosure; because in many instances these mortgages were paid by securing new

loans of other companies and remortgaging the same property, so that while the old debt was virtually continued, the foreclosure that ultimately came in part of them does not appear in the preceding statement. I know that the business of these companies was managed as prudently as the average; and I feel safe in asserting that on the average, during the time these two companies were operating in Indiana, at least one-half of all real-estate mortgages made were foreclosed. Of course it must be remembered that the period referred to was one of financial depression, and that in normal years the proportion of foreclosure is much less.

If the people of any Western state may be considered thrifty and judicious, the people of Michigan may, and by the official records their condition appears to be as bad as that of their neighbors in Indiana. In 1887 an attempt was made by the bureau of statistics to ascertain the mortgage debt of the state through personal declarations of the owners of land. This is the best method of ascertaining the amount of existing debt; the only flaw in it being that some persons, considering that the public has no interest in their affairs, refuse to give the information. In consequence the returns are less than the reality; but in the desire to keep within the truth, we accept them as accurate. They show (report of 1888) that the real-estate mortgages of the state amount to \$129,229,553, with an annual interest payment of \$9,451,851, on a total realty valuation of \$686,614,741. Of this amount \$64,392,580 is on farms, and the annual interest charge is \$4,636,265. The farms mortgaged are 47.4 per cent of all the farms in the state, and the mortgage debt is 46.8 per cent of the assessed value of the farms mortgaged. The number of foreclosures made during the year was 1667, and in only 131 cases were redemptions made, leaving a net loss of 1536 pieces of property by foreclosure in one year. The situation apparently justifies the statement of Commissioner Heath that "a very large proportion of the people seem to be in a financial rut, and are unable to extricate themselves."

In 1888 the Illinois bureau of statistics made an attempt to ascertain the mortgage debt of that state by another method.

A carefully prepared abstract of the mortgage records was made for three years, 1870, 1880, and 1887, in which the amount of each mortgage and the term for which it ran were noted. From these amounts an average term for the whole annual amount of mortgages was calculated, and, on the theory that the average term of mortgages in consecutive years was substantially the same, it was assumed that the total mortgage indebtedness would be equal to the amount of mortgages recorded during the year multiplied by the average term. The plausibility of the method is heightened by the fact that there was no great difference in the average terms of the three years examined. If the amount of mortgages satisfied during each year were exactly equal to the amount recorded, this method would be proper and the result would be approximately correct; but in fact the two sums are not equal. The fallacy involved in the estimate is that of attempting the calculation of the relative distance of two moving bodies without any data relating to one of them. In this case the mortgages recorded are the fleeing hare, and the mortgages satisfied are the pursuing hound. The existing mortgage indebtedness is the distance between them, and it cannot be estimated from the speed of either alone. To illustrate: suppose that for ten consecutive years the mortgages recorded amounted to \$10,000,000 annually, and the mortgages satisfied to \$5,000,000 annually, the average term being the same for each year. A calculation based on the returns for the first year would give precisely the same total of mortgage indebtedness as one made on the returns for the last year, although the amount had actually increased \$45,000,000. If the conditions were reversed, and the satisfactions were annually \$5,000,000 in excess of the mortgages recorded, the calculations for the first and last years would again have precisely the same result, although the volume of mortgages had in fact decreased \$45,000,000.

Still, the calculation is not without value, for it is evident that the amount thus ascertained is a reliable maximum or a reliable minimum according as the volume of debt has increased or decreased through a considerable number of years. The situation and known condition of Illinois are sufficiently like those

of Indiana to justify the conclusion that the volume of mortgages has been increasing for twenty years or more in the well as the other, and this inference is confirmed by a comparison of the records for the first and the last of the years examined. The total number of real-estate mortgages recorded increased from 44,290 in 1870 to 63,000 in 1887, and the amounts of the same years increased from \$75,300,898 to \$90,705,684. If it is possible that satisfactions might keep pace in this increase with the mortgages recorded, the contingency is so remote that every iota of evidence is so clearly against it that it may be admitted that the volume of mortgages is increasing and the estimate is a minimum. The total amount of real-estate mortgages on Illinois property in 1887, as thus computed by the statistician, was \$381,322,339, and the annual interest on it was \$12,702,542. The assessed value of the real estate in Illinois was \$575,441,053. The great excess in proportion of mortgage debt to land value here shown, as compared with Michigan and Indiana, is due to the different rates of assessment in the three states. According to the census of 1880, property in Illinois is assessed on the average at 25.44 per cent of value, in Michigan at 37.79 per cent, and in Indiana at 30.15 per cent. Our ascertained minimums of mortgage debt stand relatively as follows: Illinois, \$381,322,339 of realty; Michigan, \$129,229,500 of realty; and Indiana, \$106,800,000 of realty. The annual payment of interest by the three states on their known amount of debt is the enormous sum of \$1,109,000,000.

With this state of facts demonstrated to be true, that the Western states that are rich in natural products, fertile of land, and well situated for commerce, it will probably be concluded that the mortgage indebtedness of the Western states is a matter of serious attention of economists and statesmen, as well as of the people of those states. Whatever may be thought of the fact — mountainous and immovable. A question that looms far above the figures here given is the questionable whether the "alarmists"

subject have in fact materially exaggerated the existing condition.

The most serious effects of a state of general indebtedness are two : first, its aggravating force in times of financial depression ; second, its constant drain on the production of the commonwealth. The first is well illustrated by what has occurred in the states mentioned in the past fifteen years. For seven or eight years after the Civil War "times were good." Money was plenty, business of all kinds was prosperous, and a general spirit of adventure in business enterprises had grown up. Then came a financial depression. Its causes, for present purposes, are immaterial. History assures us that such depressions recur at intervals, from various causes, and we must of necessity treat them as conditions that may exist again at almost any time. Money became scarce. Interest was not easily met. As a rule, in the effort to keep up the interest on secured debts men pushed off the payment of unsecured debts, and so every class in the community partook of the injury, while the ready money in the country was constantly drained away from it by the payment of interest on foreign loans. In a very short time the era of bankruptcy and general foreclosure was reached. The extensive paying power of money in a community where credit is common is well understood. A pays B \$100; B, with the same money, pays C; C pays D, and so on until \$1000 of debt may be extinguished by the one sum. In the absence of the \$100 this satisfactory method of transfer was reversed. D sued C; C sued B; B sued A; and so instead of satisfaction of debts there arose litigation, attorney's fees, court costs and forced sales of property. This was especially serious as to mortgaged property; for universally, by the terms of mortgages, on default of interest the whole debt became due and foreclosure might be had at once. Hence the amount of debt immediately payable was enormously increased at the very time when payment was most difficult, and the natural stringency of the depression was multiplied over and over again.

But this was not the worst effect. On account of sales on foreclosure, sales on execution, and the voluntary efforts to sell

land in order to obtain money, the market value of real estate was soon depressed much below its true value, and remained so for about ten years. One or two instances will show the extent of this calamity. A piece of property for which the owner refused \$25,000 was mortgaged in 1876 for \$6,000, in order to raise money to meet pressing claims. In 1879, the owner, being driven to the wall, the mortgage was foreclosed and the property bought in by the mortgagee for \$6,826, the amount with accrued interest, attorney's fees and costs. In 1882 the property sold for \$10,500, and the purchaser has since refused to pay more. A piece of property appraised by three sworn appraisers at \$22,500 was mortgaged for \$7,500. In 1878 the mortgage was foreclosed and the property bought in by the mortgagee for \$4,500. Under the remainder of the judgment (\$3,793) other property of the owner was levied on and sold. The same mortgaged property has since been sold for \$12,000. These cases are mentioned because they came under my personal observation, but they were not unusual instances. They are typical examples of what occurred in the majority of foreclosure cases in this state. It should be added that the personal judgments rendered on foreclosure were usually against several persons, and that the person who bought mortgaged property commonly bought it to pay the mortgage debt. It is also to be noted that whether mortgaged or not, felt the depression in the value of real estate. For example, I have in mind a block of unincorporated lots which in 1873 were selling at \$3,200 each. They were sold very slowly at \$500 each. At present they are selling readily at \$1,500 each.

It is very evident from these facts that in times of financial depression, has a power largely in excess of its own volume. To illustrate the second case mentioned the owner of the property was worth at least \$4,000 above the mortgage deductions; under foreclosure and sale he lost the property also, by owning the property, suffered to the amount of \$3,793. I believe intelligent observers will bear me out



under such financial conditions as existed ten years ago, the value-destroying power of mortgage debt is at least equal to twice its volume, and this power must be kept in mind if the significance of mortgage debt is to be understood. On the mortgaged farms of Michigan the mortgage debt is reported to be 46.8 per cent of the assessed value. Assuming for the purpose of illustration that the assessed value is the true value, my proposition is that if these mortgages were foreclosed in a time of general financial depression the entire value of the farms would be consumed in satisfying the mortgages. Further than this, there would result a general depreciation of value in realty that would cause a like loss on all unincumbered property sold while the depression continued.

Of course this loss of value is relative to the owners and not absolute. The subsequent owners have the advantage of the gradual return of the market value of the realty to its normal value. There can be no loss to the mortgagee unless he sells while the depression continues. In some cases foreign loan companies have done this and, mistaking the nature of their loss, have complained bitterly of the wild speculative spirit that had so greatly overestimated the value of the realty pledged to them. At the present time, property having regained something like its normal value, such losses have been compensated by corresponding gains, so that no foreign company, so far as I can learn, has lost anything, and some have realized handsome profits. The Connecticut Mutual Life Insurance Company, in its report of January 1, 1888, to the insurance commissioner of Connecticut, states its net gains on sales of real estate taken in foreclosure to that date at \$752,175.17. This profit was chiefly on Chicago property; and I will venture the prediction that this company will realize at least an equal profit on the realty now owned by it in Indiana and Illinois.

It is plain, both from the facts stated above and from reason, that no just appreciation of the condition of owners of farm property can be gained from statistics of farm mortgages alone. The market value of farms is necessarily affected by fluctuations in the value of neighboring city and town property, and *vice*



*versa*. The effect of throwing on the market large quantities of realty of any kind is to decrease the market value of realty of all kinds. There can be no large depreciation of value in city and town property without a corresponding decrease in the value of farm property, and no large depreciation of the value of farm property without a corresponding depreciation in value of city and town property. Even if the contrary were possible in theory, it could not be in fact, for the same causes that tend to depress the market with realty of one kind will at the same time depress the market with realty of the other, and so the two will increase or decrease together. Every cause that tends to create, continue or intensify a financial depression is a necessary factor in the economic consideration of general mortgage indebtedness, and as to the effect of any particular portion of such indebtedness no cause is more important than the remaining portions.

The second noteworthy evil is the drain of money from mortgaged territory by the payment of interest. In the states mentioned, as we have seen, there is annually paid at least \$29,634,393 of interest on real-estate mortgages. How much more is actually paid can only be conjectured. There is no way of determining what proportion of this goes to the states paying it. The Illinois bureau attempted to determine what amount of foreign mortgages were recorded and reported that it was unable to do so on account of the large amount of foreign loans made in the names of individuals for some real or fancied business advantage. The proportion of record was eleven per cent of the total, but it was not known "how much should be added to this amount." The nature of the case, "being a matter of individual property, scarcely worth while to speculate on the question," seems clear from the relative wealth of the two states. The percentage in Indiana must be greater than in Illinois. It is another class of statistical information, however, from which some conception may be gained of the effect of the Western states through interest on mortgages. The property taken in foreclosure. The following is the report of the insurance commission

1888, shows the official statements of five life insurance companies as to their annual income from interest on mortgage loans, and as to the value of real estate now owned by them in Indiana and Illinois.

TABLE V.

	Annual interest on mortgage loans.	Realty in Indiana.	Realty in Illinois.
<i>Ætna</i> . . . . .	\$982,637	\$123,509	\$161,801
<i>Conn. Mutual</i> . . . . .	1,829,538	2,107,334	2,247,189
<i>Phoenix Mutual</i> . . . . .	440,157	509,487	312,428
<i>Traveler's</i> . . . . .	248,280	626,476	228,083
<i>Mass. Mutual</i> . . . . .	158,695	59,198	191,748

As to a number of companies the details are not given ; but the total annual interest received on mortgage loans by twenty-seven American companies reported as doing business in Connecticut in 1887 was \$12,832,546. Of course not all of this comes from the West, and on the other hand these companies represent only a small portion of the foreign capital loaned on Western real estate. The rentals received by these same companies in 1887 amounted to \$1,728,809. Their total income was \$123,118,215, and their total expenditure (including losses) was \$88,839,354. The net profits were \$34,278,851. It will be remarked that the profits of these companies are not due to mortgages alone. I mention them as prefatory to the statement that the payment of interest on mortgages is in fact but a small portion of the annual drain of money from the Western states through the usufructuary power of capital, and that the payments of insurance premiums in excess of the returns in losses paid is a much greater sum. But the point where insurance enters directly into the consideration of mortgage indebtedness is the universal provision of mortgages for the insurance of the mortgaged property in favor of the mortgagee, with a stipulation that on failure to keep up insurance the mortgagee may do so and add the premiums to the debt. Possibly this insurance money is well spent, but practically it would not be spent at all, in many instances, but for the mortgage. In those cases it

is just as much an incident of the mortgage as the interest and amounts to so much additional interest.

Other features of the steady drain of profits from the Western states are equally striking. In the estimates above given roads have been omitted entirely. It is notorious that no road in Indiana is actually owned by Indiana men, although two or three instances they control the stock. The total mortgage indebtedness of all the roads will cover their total wages and the net profits, with the exception of not over \$50,000 annum, go to non-resident capitalists in the shape of interest and, in a small proportion, dividends. The assessed value of the railroad property in Indiana in 1888 was \$64,211,717; the actual value is about twice that sum. The yearly payment of interest computed on this basis (the average rate of interest on railroad bonds being six per cent) would be about \$7,700,000. By the late statistical report of the Interstate Commerce Commission, Indiana has 3.82 per cent of the railroad mileage of the United States, and the total annual interest payment on bonds of United States railroads is \$168,821,401. Computed on this basis the annual interest payment from Indiana is \$6,499,000, and this is a safe minimum, for the mileage is beyond doubt as heavily mortgaged as the rest of the country. The nominal amounts of mortgage and interest paid are enormously in excess of the figures here presented and cover the lines in their extent through other states on no basis for computation as to Indiana.

From the sources mentioned and from the interest paid on public debt, chattel mortgage debt and unpaid taxes it appears that Indiana must make to non-resident capitalists an annual payment greater than the entire tax levied (between twelve and thirteen millions). It is difficult to exaggerate the evil of this drain on production, for there can be no advance in wealth from production unless the products are sold outside the state to cover this drain. If everything bought in the state from outside is paid for, the balance of trade is not thus favorable, and the state is losing in real wealth so far as production is concerned.

brought in by immigration and the increased value of lands from increased population more than counterbalance the loss in apparent wealth, but the steady increase in mortgages and non-resident ownership warns us that the residents are moving towards the condition of tenants to absentee landlords. As an axiomatic proposition, any condition of affairs, however produced, that without compensation in value causes the transfer of the gains of one state or region to another, whether under the same government or not, must necessarily injure the tributary state and, if persisted in, bring it to ruin. Such a condition tends constantly to create scarcity of money and produce financial depression. In times of general financial depression it invariably causes the tributary state to suffer much more than it would if its natural powers of recuperation were not thus pledged and forfeited. An example may be seen in Ireland, from which, originally by taxation and of recent years by absentee landlordism, the profits of labor have been continuously drawn away to be expended in other countries. Its wretched condition has excited the sympathy of the civilized world. The causes of its misfortunes are but too apparent.

But, as it is always to the interest of those who profit by any economic condition to endeavor to reconcile those who suffer by it, we are informed that the general state of indebtedness in the West is a blessing. To whom? Certainly not to the individual debtor. There are comparatively few uses to which borrowed money may be put that will preserve the principal intact and yield a profit greater than the interest, and of those that do exist the greater portion must be classed as lucky speculations. If this were not true, the men who have capital would themselves employ it in such investments as would yield these greater returns. There are of course exceptions, but as a rule it is absurd to expect men unused to handling capital to employ it to greater advantage than those whose business has long been to manage it. But even if there were such extraordinary sagacity in the borrowing classes, the truth is that but a small portion of the borrowed money goes into those substantial betterments or judicious enterprises that are pictured as the full

justification for extensive borrowing. As a rule the money goes, like any other money placed in the hands of men accustomed to its use, in profitless extravagance or unfortunate speculation. This is better understood by the Western people than it was formerly, but the information has been obtained at sore experience. No man who has "gone through the mill" can be convinced that mortgage debt was a good thing for him.

As to the community, the disadvantage of general indebtedness ought to be equally apparent from the facts stated above. Suppose that all the surplus capital were taken out of Connecticut or Massachusetts and the indebtedness of the state were increased to the extent of two or three hundred millions, would the state be benefited? Would any amount of gravel road-tiling<sup>1</sup> compensate for the change? The economists who hold to the affirmative may succeed in deluding themselves, but they cannot longer delude the people of the West. There are cheering signs in this region. First, the mortgages of the present are mostly for the refunding of old debt. Second, there is a wonderful growth of building associations, by which the people are trained to accumulate capital gradually and intelligently. Thrift will stay the tide even if it cannot turn it. In Indiana, although the mortgage debt has grown to forty-six millions in seven years, the annual increase has been more than one-half from 1882 to 1888. Possibly a turning point may be reached even under present conditions; a decrease of mortgage debt may begin.

In conclusion, however, it should be said that the facts above are merely manifestations or natural results of a well-known truth: In some way, the capital of the country has been aggregated and is still being aggregated by monopolies, and by its usufructuary power is drawing from all other sections the profits of labor of the other sections. As the result of national legislation, the tributary states defend themselves for its existence. The present condition is explained by the aphorism that "wealth is concentrated," or on the theory that the richer

<sup>1</sup> [See POLITICAL SCIENCE QUARTERLY, I

are such because they are the older. We of the old Northwest Territory have completed a century under organized free government — a century which has always been believed to be one of prosperity in agriculture and commerce. It is not possible that the conditions now existing are the results of natural causes, and if it were, the outlook for the future would not be pleasing. Our soil has been generous, but it shows the loss of its virgin fertility. Our forest product has been enormous, but it cannot be duplicated from the same sources. If nature be at fault, what should we expect of our second century? But we are not forced to so hopeless a conclusion. Reason affirms that the impediments which have hindered our advance are artificial. The causes that produced our present condition were created by men and may be removed by men.

J. P. DUNN, JR.

## WELLS' RECENT ECONOMIC CHANGES.<sup>1</sup>

IT would be difficult for an economist to choose a subject of more general interest than that which Mr. Wells has taken. The industrial organization of the present age has changed from that in the past in so many ways that the actual economy of the American people is a radically different one from that of their ancestors. And certainly there is no American economist better fitted by nature and experience than Mr. Wells for the task he has chosen. He has a good mental equipment for a statistician and a wide knowledge of all the economic changes of recent times. His mind is a great storehouse of facts which need only to be properly arranged and co-ordinated to be of the greatest value to all persons desiring to comprehend the economic changes taking place at the present time. There is no other place where the leading facts bearing upon the recent industrial changes have been so well presented as in this book. In fact we can almost say that there has been no attempt made by other writers to arrange these facts properly, so as to show their bearing upon economic doctrine.

So long as the interest of the reader is directed solely toward acquiring the facts connected with the recent economic changes, he will find Mr. Wells' book of especial importance. But there is another side to the matter which demands attention. While Mr. Wells has a ready command of facts and is strong in all particulars where facts have a bearing, yet in his logic and in the way he draws conclusions from his facts, Mill and Cairnes have surely not been used as models. From this combination of circumstances it seems to me that his book will have an undesirable effect. It must become a part of our present literature because of the store of facts which it contains. It

<sup>1</sup> Recent Economic Changes. By David A. Wells. New York, Appleton & Co., 1889. — xii, 493 pp.



monize with their views. Economists should not, however, shut their eyes to erroneous reasoning merely because they agree with the conclusions. The reasoning is in reality of equal importance with the facts, and economists ought to criticize severely any book that uses poor reasoning even though the conclusions are in harmony with their point of view, so long as the tendency of a book and not its reasoning is made the basis of approbation, the tone of all economic discussion will be very low. In the confusion which will thus arise economic science cannot influence the development of public opinion to the extent which is to be desired.

The point of view taken by Mr. Wells is to such a degree of harmony with mine, that it would be very easy for me to issue with him upon his conclusions and direct my whole attention towards refuting them. In this way perhaps a more interesting discussion would arise than that upon which I am about to enter. Yet I think that such a discussion would be comparatively worthless for the development of economic science because of a lack of harmony as to logical method. I therefore direct my criticisms primarily against that part of Mr. Wells' book where his conclusions agree in the main with my own. In this way the logical method may be brought to the foreground and a correct comparison made as to the value of the different methods of reasoning.

If I understand Mr. Wells' position correctly, he harmonizes quite fully with mine as to what is the best for our government in relation to the use of gold as a money system. We both agree that the time has come when gold can with advantage be made the sole basis of the system and that the disadvantages of a departure from it outweigh any advantage we can derive from a continuance of the present system. A good opportunity presents itself to test the soundness of Mr. Wells' reasoning, since neither facts nor conclusions are in question. It is the road from the facts to the conclusions which I wish to direct attention to.

Mr. Wells states clearly his logical method on pages 124 and 125. The first premise is



is that no extraordinary or complex agency should be invoked to explain phenomena so long as ordinary and simple ones afford an equally satisfactory explanation. This canon seems reasonable at first sight, yet on a little examination it will be seen that it is without any value, because it does not give any criterion by which to distinguish an extraordinary or complex agency from an ordinary or simple one. Mr. Wells would doubtless regard as very simple an agency which, to his opponent, would seem very extraordinary. This fact is clearly brought out in his second premise, because he starts out with the assumption that a particular doctrine about supply and demand is the most natural presumption in the case. But Mr. Wells certainly is not so ill-informed of economic discussion as not to know that this very premise which he regards as so natural is one of the most disputed questions in economic literature. What help can the preference of the natural presumption give us, when each writer regards his assumption as the natural one and that of his opponent as the extraordinary and complex one? Mr. Wells' position is remarkable from still another point of view. At its very basis lies the assumption that the recent fall in prices is due to improvements in production and not to the scarcity of gold. This presumption Mr. Wells regards as the natural one. Yet this method of accounting for the general fall of prices, natural as it may seem to Mr. Wells, has never been used before the present bi-metallic discussion. The whole subject of the changes in the value of the precious metals has occupied the attention of economists for the last two hundred years ; and in every such discussion, until the present time, the assumption has been that if prices as a whole have fallen it was a result of an appreciation of the value of money. It is almost comical therefore to see Mr. Wells, in the face of the whole economic discussion of the last two centuries, setting up a new point of view, not yet a dozen years before the public, as the natural one. Does it need any more proof to show that the attempt to distinguish between the ordinary and the extraordinary or the natural and the artificial is of no value in arriving at correct logical conclusions?

In the closing section of the paragraph to which I referred Mr. Wells makes a serious mistake in confusing abundance of capital and a low rate of interest with an abundant supply of money. From the approving manner in which he quotes Lord Addington he seems to affirm that there can be no appreciation of the value of money so long as there is an abundant supply of capital and a low rate of interest. At the close of all the discussion which has taken place in order to show that the popular use of the word "money" has two meanings, — one referring to the quantity of the currency and the other to the abundance of loanable capital, — it seems strange that an economist of his reputation should confuse the two. A low rate of interest indicates an abundance, not of money, but of capital seeking investment; and it is quite possible that a nation should have a plentiful supply of capital and yet have a decreasing supply of money. Capital may grow and interest may fall at the same time that money is becoming scarce. In what way would Mr. Wells account for the fall in currency prices at the close of the Civil War except by a change in the relation of the quantity of paper money to the volume of business?

But even on Mr. Wells' own basis there seems to be an increase in the value of gold. He claims that there has been a reduction in the price of those commodities which are now produced by improved processes. Another class of commodities, he thinks, has increased in price. This class is composed mainly of those articles which are produced by unaided labor under conditions similar to those by which the articles were produced in earlier times. Gold is a product of manual labor and belongs to this class, not to the former. Gold is obtained in the same way as formerly. There have been no changes in the process of producing it. Hand labor still washes the gold from the sand, and its value must be determined by the value of hand labor. Labor having increased in value, as Mr. Wells maintains (p. 361), we should expect to find as a result that the value of gold in the market would be greater than for

The challenge which Mr. Wells gives to his opponents, to show how a scarcity of gold can depress prices, affords the most favorable opportunity to compare his methods of reasoning with established economic canons. He is perfectly safe in asking for a concrete case of a particular commodity which has fallen in price from a scarcity of gold, because such a scarcity affects all commodities alike and does not furnish concrete cases. The chief difficulty with Mr. Wells is that he takes hold of this problem wrong end first. *How prices are depressed* is not an independent proposition to be treated alone. It can be solved only after knowing *how prices are fixed*. That the scarcity of gold lowers prices is a deduction from the well-known facts upon which the laws relating to the value of money depend. While the effect of a scarcity of gold in lowered prices may be disputed, no one yet has denied that the rapid increase of the gold supply since the discovery of America has raised prices. If an increase in the supply of gold will raise prices, it is certainly good logic to assume that a scarcity of gold will have the opposite effect. Perhaps, however, the best proof of the fact that a change in the quantity of money affects prices comes from the history of paper money. There is in this history an abundance of facts showing that the quantity of money is an important element in fixing prices, and Mr. Wells must transfer his battle to the causes fixing prices in these cases before the facts of his opponents can be called into question. He must, in the first place, give us a theory of fixing prices in which the quantity of money plays no part — a theory making prices depend solely upon the abundance of capital, the rate of interest, the amount of credits or the quantity of circulating personal property. When such a theory is advanced by Mr. Wells or the friends from whom he quotes, they will find that their opponents have ample resources to sustain the position of the earlier economists.

The only strange thing is that he should suppose that the facts he presents are new to economic literature and hence can have an effect upon the theory of money. He talks of the different quantity of money needed by France and England to do

the same amount of business, just as though this fact was not illustrated and explained in every elementary political economy. Ricardo brings forward a table (page 222) to show that prices are determined by the quantity of money, just as if the author of the laws of money was a mere theorist ignorant of commercial facts. While there has been an abundance of fault found in Ricardo's knowledge of industrial relations, no one has dared to question his thorough familiarity with money matters. He was a practical business man who appreciated fully all the conflicting surface currents which affect the money market. His success as an economist lies in the careful analysis he made of these conflicting causes and in the extent to which he revealed the laws upon which they depend.

The defects of Mr. Wells' point of view come out very clearly in discussing the future of silver. From what he says on page 100 it does not seem that he anticipates or even desires any reduction in the price of silver. He has no objection to the bolstering of the price of silver, only the bolstering must be done by the proper method and not by that advocated by the bi-metallists. He would like to have our government keep up the price of silver by increasing the coinage of our country. This Mr. Wells does not wish to see done. He thinks the duty of upholding the price of silver should fall upon the less civilized races. A silver standard is in his judgment peculiarly adapted to make them more prosperous and they will use more silver. As a result the present supply of silver can be used up by the various currencies. Accepting this way out, Mr. Wells wants no action as much as our bi-metallists, the only difference being in the line of action to be pursued. Mr. Wells' remedy, like one he applies to all industrial troubles — that of reducing the tariff. Reduce the tariff and then, in order to secure a market for all our silver in the less civilized countries with whom we trade. The error in this position is in assuming that the American people are as a whole in favor of a high price for silver. On the contrary, they are interested in a low price for silver. Silver is not a good thing for the American people.

qualities which would make it especially useful to mankind if it could be cheaply produced. It will not easily tarnish and has a brilliancy and beauty that would cause it to displace, for many purposes, the cheaper metals which lack these qualities. Its clear, metallic tone makes its use for musical instruments very desirable. Silver ware also is of immense importance to the American people for household uses. We must therefore regard the interest of the American people as lying in cheap silver and not, as Mr. Wells supposes, in dear silver. The great advantage of a single standard of gold lies in the fact that it allows the use of silver as a commodity by the American people, instead of having it stored up at Washington, as the advocates of dear silver demand. In the end the American people will accept neither the solution demanded by the friends of silver nor that suggested by Mr. Wells. They will not pile up the silver in Washington, nor will they export the mass of it for the use of less civilized countries. They will retain it for their own use and consume it in a thousand ways that will add materially to their happiness and prosperity.

In the endeavor to restore the price of silver to its former level there is nothing akin to the doctrine of protection. It lies at the basis of all protectionist arguments that in the end the protected articles become cheaper to the public than foreign productions. Owners of iron and copper mines get their protection on the plea that it helps to cheapen the metals they produce; and they present a mass of facts which at least seem to show that protection has benefited the consumers of their products. The owners of silver mines, on the contrary, do not ask for a higher price of that product in order that it may in the future be permanently reduced to a lower price than ever before. They claim that a high price of silver is a benefit to the public, and they ask the government to lend its aid to their endeavors in behalf of a permanent increase of this price.

Butter-making is the only other industry which stands in the same position. The dairy men ask that the price of butter be restored to what it was before the manufacture of oleomargarine,

and they make no claim that this increase of price will lead ultimately to lower prices. The dairy men want "natural" production as badly as Mr. Wells does. He therefore deserves great credit for breaking away from his prejudice for "natural" production in this case. It is hard, however, to see why the "natural" production of butter should not have the same preference as that of sugar. If the cane is defrauded by getting sugar from a beet, certainly the cow is wronged by making butter from a hog.

A few more illustrations of the logic of Mr. Wells may profitably be selected from other portions of his book. His defective reasoning comes out quite clearly in discussing the relation between wages and labor-saving machinery. He argues that labor-saving machinery must be beneficial to laborers because wages have risen since the introduction of improved machinery. In this matter his opponents presumably would not contradict any of Mr. Wells' facts. They would merely point out the defects in the conclusion. Wages may have risen, they would say, but not in proportion to the increase of productive power. If this is true there must be some cause for the deficiency—there must be some counteracting agency which has prevented the laborers from receiving a proper share of the increase of productive power. For those analyzing the present situation in this way, it is at least tenable to maintain that the one-sided industrial development of the laboring classes and the economy of skill resulting from the use of large quantities of machinery are the causes of the slower increase of wages as compared with the increase of productive power. The difference in the two positions, therefore, is not a question of fact as to the increase of wages; it is merely a question of reasoning as to what is the influence of the different agencies which are operating upon the laboring classes.

Another illustration of bad reasoning is to be found on page 370, where the author assumes that the absolute share of the product to both laborer and capitalist has been increased because of the increase of the total product. This theory overlooks the fact that the whole product of industry does not

go to capitalists and laborers. The whole problem of rent and the influence that it has on the distribution of wealth are overlooked. There has been nothing in the development of economic doctrine in this century that is of so much importance as the setting aside of this early conception of distribution and the introduction in its place of the Ricardian conception, by which rent becomes a factor in the distribution of equal importance with the other two. But Mr. Wells' reasoning comes in conflict with accepted economic doctrine in another way. He assumes that wages are fixed by the average return for labor and not by the least productive labor. According to well-established economic doctrine, wages and interest are determined by the margin of cultivation, that is, the poorest land of which the community makes use. Any advantage possessed by laborers on better land is taken from them as rent. There is hence a great fallacy in assuming that all the increase of productive power has been added to wages and capital. This favorable result could only obtain when poorer lands have not been brought into cultivation since the increase of productive power. To the discussion of this problem Mr. Wells adds nothing. His reasoning, therefore, is defective and his conclusions are out of harmony with economic doctrine.

The illustrations I have used are sufficient to give a correct idea of Mr. Wells' method of reasoning. He reduces all economic problems to too great a simplicity. He has too few causes, and all these causes he makes more powerful than they really are in the economic world. Each class of phenomena is, from his point of view, the result of some one force or cause, and these causes are so few in number that he does not seem to regard any disturbance of the action of one cause by another as possible. Mr. Wells seems also to think that if one cause is really at work, it must work so undisturbed that the effect will be wholly its effect. If improved production lowers prices, he thinks that all reduction of prices must result from improved production and that no other cause can play any part. If wages have risen because of the freer use of machines, and if the results are good as a whole, he seems to infer that machines



cannot produce any injurious effects. He is never satisfied unless his proof tallies with the effect of his single cause in an engineering problem. Good reasoning upon economic subjects is, however, based upon a very different supposition. There is in society a great variety of causes in operation, and their effects never tally exactly with those which would be produced by any one cause operating alone. Oftentimes a cause is so counteracted by the effects of other causes that the results do not seem to show any effect of the particular cause in question. Yet we know that it was in operation, and we can measure its effects in a negative way by seeing to how great an extent it lessened the effects which would follow from the other causes if it were not in operation. The names Mr. Wells applies to his causes indicate very clearly his method of reasoning. "Sufficient" (page 87) and "all-pervasive" causes (page 88) sound well, but are not to be found in an economic world. "Synchronous" causes belong to the same class. It is fortunate that Mr. Wells did not point out some "irresistible" cause. He also speaks as though there were causes as constant as the influence of gravity — an assumption which is a wrong conception of the way economic causes influence phenomena. Mr. Wells is perfectly right in asserting that advocates of the scarcity of gold can produce no sure results nor show any of their results in an economic world. They would be likely to reply that they had no desire to make such causes, and to make the same issue with him as he has made as to the logical method of proving economic positions. When gold rises in price, other prices certainly drop like shot; and Mr. Wells wastes time in asserting that there is no such close relation between the price of gold and the price of commodities. There are so many other causes than the scarcity of gold that affect the prices of commodities that a change in the quantity of money can be shown by a careful investigation running through a long series of years.

Economists do not regard a doctrine as false merely because some of the facts do not agree with it. The greatest successes in the



phenomena have been those which have shown the law to be entirely different from what surface appearances seemed to indicate. On the part of Ricardo and other leaders of modern economic thought there has been no tendency to hide or discolor facts merely because the doctrines which these authors advocate do not have all the facts on their side. It is expected that an apparent opposition between the various classes of facts will appear in the investigation of any problem. He is the skilful economist who so analyzes these complex conditions as to show the simple laws which work beneath the surface.

We now arrive at the proper place to answer the question raised by Mr. Wells as to the cause of the present reaction against free trade throughout the whole civilized world. A little of the history of economic theory will throw a wonderful light upon this subject. The agitation for free trade and sound currency was begun by Adam Smith, yet the strong array of facts he presents made little or no change of public opinion. The same old fallacies thrived; they even gained in force through the next thirty years, before Ricardo took up the struggle for the new economic doctrines. He, however, fought his battle not with facts but with sound logic and bold theories. Thirty years of such warfare resulted in a decisive victory for the new commercial policy. But no sooner was the movement successful than new leaders were chosen. Facts now seemed to prove the free-trade theory, and a resort was again made to the weak logic of the earlier period. The smooth tongue of Bastiat displaced the rugged logic of Ricardo, and in every land the Manchester party found adherents who strove to convince the public that progress could be hoped for only through an imitation of English civilization, political and economic. Cartloads of English facts were imported by these enthusiasts, which, when watered by poor logic, were given as free food to all their adherents. The poor logic seems however to have been the only part of the dose assimilated by the public; and at the end of another forty years it seems to have neutralized all the advantage gained by the Ricardian movement. Not only does the economic policy of the civilized world seem

to have returned to that of an earlier period, but the *val* ground obtained by logic and theory has been to a great *de* lost. In the discussion of free trade we find ourselves *ba* the time of Adam Smith, because we have gone back *to* logic of his age. So long as both parties resort merely to *to* vitalized by feeling, neither can win more than an *app* victory.

Economists have nothing permanent to gain by destr~~oying~~ the dogma that free trade is good for all nations and if in its place they set up another, asserting that *nat* industries are mere creatures of governments. The *su* of the beet-sugar industry in Germany no more proves second dogma than English free trade did the first. It is useless to expect that the sugar beet will thrive in all of Europe as it would be to expect the same of the *p* or the grape. A mere imitation of a successful *Ge* policy will be as disastrous as a like imitation of England proved. Universal theories are failures because the *structure* reaches out beyond the facts upon which *based*. Each economic policy has a value only *ur* particular industrial conditions of a given nation *a'* time. It is not the mere accumulation of facts *tha* permanent victories for those who believe that the policy of each nation should be based upon its *ow* conditions. Only by the development of better *log* theory can they use the facts with enough skill root out the creed of universal free trade and *thu* nation a national policy which will develop all its

Before closing this review I wish to take up where issue may be taken not merely with the *ing* but also with the facts upon which his *re* Mr. Wells devotes a considerable space to *th* beet-sugar industry in Germany and the iron *ir* and endeavors to show the great injury done *policy* of America and Germany in fosterir If he had presented all the facts bearing up of these two industries, there would have

at this time these problems should be discussed. But those peculiarities in Mr. Wells' reasoning of which I have spoken have led him to color the facts in such a way that the real progress of these industries and the causes aiding in their development, together with the influence which they have upon the whole industrial system of the countries in question, cannot be seen. I shall therefore take up both these problems, and show in a concise way what are the leading facts upon which conclusions opposite to his have been based.

To know the importance of the sugar industry of Germany, not only to the welfare of Germany but to that of the whole world, a short sketch of the production of sugar for the last three hundred years is necessary. The cane sugar is suited only to semi-tropical regions and must be produced under the social and political conditions which are there prevalent. On account of the ignorance of the people and the insecurity of property, only the crudest methods of production have been brought into use. As a result of this condition of affairs three hundred years have gone by and no change has been made in the methods of producing sugar. The same crude machinery and wasteful methods are in use. The people of the whole world have paid for ages a very high price for their sugar, and there seemed to be no hope that any change in the social conditions of these regions would allow the inauguration of any better methods of production. To remedy this state of affairs, Germany endeavored to produce its own sugar from the beet root. For a long series of years the government has encouraged the production of sugar from beets, until at length a beet has been obtained which is suited to the soil and which yields sufficient sugar to make its production profitable. In the contest between the cane sugar of the South and the beet sugar of the North, climate was on the side of the South while intelligence and capital were on the side of the North. Intelligence showed itself a more important factor than climate, and the price of sugar produced in Germany has now been reduced much below what it could have been while the whole supply of the world was obtained from the half-civilized semi-tropical regions. This reduction of the price

of sugar was greatly stimulated by the bounties paid by the German government for the exportation of sugar. These made profits of sugar production so great that the industry was developed throughout Germany in many new places for which it was specially suited. It is not likely that fifty years of production without a bounty would have done so much for cheapening the price of sugar as the bounty-paying policy has done the last ten years. The only objection that Mr. Wells raises to this transference of the production of sugar from the South to the North, is that "natural" production has been destroyed. It is not, however, the beet-sugar production that has destroyed "natural" production, but the ignorance of the people in semi-tropical regions. Their crude methods prevent any reduction in the price of sugar so long as the whole world depended upon them for its production. The interference of Germany with "natural" production will in the end also be of the greatest advantage even to the semi-tropical peoples, for it has broken down the social conditions which kept the industries of those countries stationary. New methods must be inaugurated by them in order to compete with the cheap sugar of the North; and this means not only the introduction of capital but also the increase of intelligence and security on the part of the people.

Mr. Wells is also greatly mistaken in his supposition that taking off of the bounties on the part of Europe would cause the production of beet sugar to become profitable and compel a return to the "natural" production in Southern regions. A still further reduction of the price of beet sugar can be made, and still it will hold its own in the world's market. There have been many new regions developed for the production of sugar to which the beet has been introduced and from which this new industry will not be driven out by a much lower price prevails than we now have. I have in mind that the beet is produced upon the most fertile land in Germany and that the rent of this land is still higher than more rent is paid for producing the beet than for any other crop, and in the reduction of the price of

a possibility of a much lower price for beet sugar. The present difficulties in which so many of the German producers are now involved arise largely from the high price which they have paid for the land upon which the sugar is produced. It is easy to see that if a producer bought his land before the serious fall in the price of land which has recently taken place in Germany, he would become involved and probably fail even though the production of sugar was of itself profitable. Under such adverse conditions there will of course be many failures, but the new owners of the land and of the factories will not cease to produce so long as they get as much from their land and from their factories as is obtained in other industries.

For these reasons the introduction of the sugar beet has been a great advantage not only to Germany but to the whole world. We now have a bar to any future rise in the price of sugar. Semi-tropical regions can never again exact that price for sugar which they formerly obtained. They may in the distant future, it is true, displace the German production, but it will be only after modern civilization has carried its benefits to the peoples of all these lands and their intelligence and the quantity of capital they use have become equal to that employed by the German people.

The peculiarities of Mr. Wells' views, as well as his way of presenting facts so as to make them tally with his position, are perhaps most clearly seen in his discussion of the production of iron and steel in America. In the body of Mr. Wells' book he devotes much space to the comparison of European with American prices in order to show the cost of the tariff to the American consumer. His method of reasoning is very simple: it consists in taking the price of the commodity on the English market and comparing it with the price on the American market. Then he estimates the burden of the tariff to the American consumer by the difference between the two prices. The difference in the price of pig iron in America and England, according to Mr. Wells, is seven dollars a ton, and the burden of the tariff upon the American consumers is measured in dollars by multiplying the amount of pig iron consumed by

seven. In the same way he makes out that the production of steel in America costs American consumers fifty-six million dollars a year, and that the loss to the public for ten years from this tax would more than supply the whole capital now invested in the production of steel. Besides this fallacious way of estimating the burden of the tariff, there is another fallacy into which free traders are sure to fall. It is now too late to expect that the American people will ever consent to the destruction of their leading industries, and hence it devolves upon the advocates of free trade to show that American production would not be reduced if the tariff was taken off. On the one hand they must prove that the tariff is added to the price paid by consumers and on the other hand that production in America would not be less without a tariff. These two fallacies are both plausible and, when used with skill, are quite effective, but it will not do to bring them into too close connection. This error in judgment Mr. Wells has committed (*vide* his appendix), and the result may be a surprise even to Mr. Wells himself. The facts which he brings forward are very interesting and of especial importance because they are vouched for by so good a free-trade authority as Mr. Wells. He shows that the production of steel in America is now so great that the additional quantity needed by America could not be produced in England without a great increase in the price of materials in Great Britain and on the Continent. The result, then, of the taking off of the tariff in America would not be a reduction of the price of iron and steel in America to that of Europe, but a rise of the price in Great Britain and elsewhere throughout the world. But if this is true, what about Mr. Wells' method of estimating the burden of the tariff? Because the difference between American and English prices of pig iron is seven dollars a ton, does it follow that the burden of the tariff upon the American consumers is seven dollars for each ton if there would be a great rise in the price of pig iron in England in case the tariff were taken off? And is the burden of the tariff upon steel products to be estimated at fifty-six million dollars a year if a like increase in the price of steel would result from an increased demand for

steel from Europe? From Mr. Wells' reasoning it would seem that the effect of a free-trade policy in America as regards iron would be an increase in the price of European iron to the American price without any reduction of the cost of iron to the American consumer. Is this not, however, a concession of the very point which American protectionists have always emphasized, and does it not prove that in reality the tariff on iron and steel is of no disadvantage to American producers even though there is at the present time a marked difference in the price of commodities? Mr. Wells does not show any means by which we can participate in the lower prices of iron in England, and hence there is no way in which a free-trade policy would be of advantage to consumers in America. But this is not all. Look at the injury Mr. Wells would do to England and the rest of the world in order that the free-trade policy may be inaugurated in America. He is willing to cause a heavy advance in the price of iron throughout the whole world, not temporarily, as some protectionists have advocated, but permanently. "For all time" is the term which he uses. If this result would follow from free trade, and there seems to be a good basis for Mr. Wells' opinion, we have a double reason for advocating protection. Protection does us no harm at least, and does consumers in all parts of the world a great advantage in keeping the price of steel and iron in foreign markets much below what it would be if the mines of Europe endeavored to supply American markets.

As free traders so often emphasize the moral point of view, it is well in this connection to notice the moral of Mr. Wells' position. Is it not a most selfish policy to create a high permanent price for iron all over the world merely for the pleasure of making production natural and trade free in America? Protectionists have often advocated higher prices, but they have at least deluded themselves with the notion that an ultimate fall in prices would follow. They have never plotted to raise prices throughout the whole world and thus check all industrial progress. It is reserved for free traders to get happiness by such

means. The motive of some protectionists is very apparent but who among them has been moved by as low a type of morality as that which is coiled up in the position of Mr. Wells?

We have now presented enough from Mr. Wells' book to show clearly his methods of reasoning and the class of facts upon which he bases his doctrine. His chief errors seem to lie in the fact that he has entered upon the investigation of economic problems with preconceived ideas not fitted to the economic conditions of the present day. All his arguments are based upon these preconceived notions, and the facts are arranged that they illustrate and even seem to demonstrate his point of view. The great changes in economic doctrine that have taken place throughout the last century have had no influence upon Mr. Wells. We should have to go back before the time of Ricardo and Malthus to find a state of economic doctrine and ideas which would harmonize with the positions he takes. He seems continually to have in mind the time of Adam Smith, and he always emphasizes that point of view which Adam Smith makes prominent. He does not even seem to have studied the literature of the later periods nor that of opponents of the present day. He is not conscious that there has been a great change in the doctrines of protectionism since the time of the mercantile school, against which Adam Smith wrote so earnestly. By reading ancient free-trade literature instead of modern protectionist books, he has made himself think that the protectionists of the present day take the same position and have the same conception of economic sociology prevalent in the first part of the eighteenth century. The most suitable comment upon Mr. Wells would be that he is an eighteenth century man commenting upon nineteenth century facts. In Mr. Bellamy's *Looking Backward* a nineteenth century man, wakes up at the end of the nineteenth century to find a new society organized upon a socialist basis. Yet there was so little change in the conditions of this period that Mr. West found no inconformities between the conditions of the twentieth century. If we were



Mr. Wells could go backwards a century in the way that Mr. West moved forward, and were to find himself in a society of the economists of one hundred years ago, his ideas and economic doctrines would be in as full harmony with the society in which he would find himself as Mr. West's usages and tastes in the matter of clothing were in the society into which he entered. His companions would never discover from his reasoning or from his economic axioms or doctrines that they had a stranger in their midst who had lived all his life in a later century, and who was familiar with the wonderful changes in its economic conditions.

SIMON N. PATTEN.

## CITIZENSHIP OF THE UNITED STATES.

THE question has sometimes arisen: Who, upon the well-established principles of general law, are the citizens of a modern state? Not necessarily all of the inhabitants; for in the case of slavery (assuming, for the purposes of illustration, slavery still to exist in parts of the world more or less civilized), the slaves are inhabitants but not citizens; and in the case of subject peoples, like the Indian tribes in the United States, these subject peoples are inhabitants but not citizens; and in the case of resident representatives or citizens of foreign states and their families, said representatives or citizens and their families are inhabitants but they are not citizens. A comprehensive definition of citizenship in the abstract is that by Mr. Justice McLean in the celebrated Dred Scott case. He says: "The most general and appropriate definition of the term citizen is a freeman." This is true in the sense that all citizens are freemen, but not in the sense (alone important here) that all freemen are citizens. For foreigners in a state may be freemen but they are not citizens. Recognizing the distinction between the inhabitants of a state and its citizens, Mr. Caleb Cushing defines the latter as "the sovereign, constituent ingredients of the government," which of course only freemen, native or naturalized, can be. To the same effect speaks Mr. Chief Justice Waite in *United States vs. Cruikshank*. His words are:

Citizens are members of the political community to which they belong. They are the people who compose the community and who in their associated capacity have established or submitted themselves to the dominion of a government for the promotion of their general welfare and the protection of their individual as well as their collective rights.

The question, however, may be seriously put, whether in this definition of citizenship by Mr. Cushing and the late chief jus-

tice an important distinction has not been wholly overlooked. By predicating citizenship of those persons who constitute the "sovereign ingredients" of the state, who compose the "political community," — do they not restrict it to electors, to those invested with the suffrage? The political community in a state differs from the civil community. It is less numerically, but it comprehends greater privileges. Membership therein implies the possession not only of the civil rights, but of the privilege of participating in the sovereignty; whereas membership in the civil community alone implies merely the possession of the civil rights, *i.e.* the rights of personal security, of personal liberty and of private property. That neither Mr. Caleb Cushing nor Chief Justice Waite intended by his language thus to narrow the scope of citizenship is plain. The thought of each evidently was that sovereignty resides in the civil as well as in the political community. But the better opinion is otherwise. Thus says Sir Henry Maine:

Nor again can sovereignty be said to reside in the entire community — an error to which French writers on public law seem especially liable. Their meaning may perhaps be that no body of individuals except the entirety of the people ought to be recognized as superior; but a dogma like this is something very different from the statement of a fact; and the truth is that no government corresponding with the description exists in the world. All polities are either monarchies or oligarchies, since even in the most popular women and minors are excluded from political functions.<sup>1</sup>

It would seem then that the citizens of a state would be more accurately defined as simply its members; it not mattering in the least whether they be of the political or of the civil community or of both. If of the first, they will belong to the class of active citizens, the voting and office-holding class; and if of the second, only to the class of passive citizens, the class of women and minors. Individuals belonging to neither of these classes are aliens. As such they may be either permanently resident in a state (as, for instance, a subject people), or only temporarily resident there (as, for instance, visiting foreigners),

<sup>1</sup> Papers, *etc.* (London, 1855), vol. I, part I, p. 30.

or altogether non-resident. Moreover, "citizenship" and "membership" being convertible terms, the citizenship of a person may truthfully be said to attach immediately at birth to a child born out of the jurisdiction of the parent's state; for by a temporary absence from his state an individual manifestly does not lose his membership therein.

The fact that in certain commonwealths of our own Union aliens are permitted to vote for United States officials — in other words are permitted to belong to the political community in the United States — is an anomaly. It is a question discussed in the sequel, whether or not the United States is characterized by the further anomaly that persons not members of either civil or its political community (the Indians) possess, under the fourteenth amendment to the constitution, the rights of citizenship; and by the still further anomaly, under the same amendment, that children born abroad, whose parents are citizens of the United States, are not themselves citizens thereof.

## I.

Any discussion of United States citizenship naturally falls into two parts, corresponding to two historical periods: the first extending from the time of the adoption of the constitution of the United States to the time of the ratification of the fourteenth amendment thereto; and the second, from the time of the ratification of said amendment to the present. During the early part of the first period, citizenship of the United States was a theme not widely canvassed. The reasons for this are obvious. In the first place, citizenship of the several commonwealths was then a theme relatively of much greater importance. Little anxiety was felt for the maintenance of the privileges and immunities of citizenship of the United States, provided citizenship of the several commonwealths were maintained. In the second place, the existence of such a thing as citizenship of the United States, in the sense of a citizenship distinct from the citizenship of the several commonwealths, was not admitted. The federal constitution contained no provision for citizenship of the United States. It contained

that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states," but this was simply a declaration to the several commonwealths that whatever rights they granted to their own citizens, those same rights, neither greater nor less, must they grant within their jurisdiction to citizens of other commonwealths. Under this provision a person going from one commonwealth into another acquired no other status than that held by the race or class to which he belonged in the commonwealth into which he went. Special privileges enjoyed by citizens in their own commonwealths were not secured to them in other commonwealths by this clause of the constitution.

That in some sense a citizenship of the United States existed was nevertheless apparent from the words of the constitution itself; such citizenship, though not defined in the constitution, being expressly recognized in the provision thereof that a person to be eligible to the position of representative in Congress must have been "seven years a citizen of the United States"; also in the provision that a person to be eligible to the position of a senator in Congress must have been "nine years a citizen of the United States"; and finally in the provision that no person shall be president of the United States "excepting a natural born citizen or a citizen of the United States at the time of the adoption of the constitution." Concerning citizenship of the United States, Story wrote in his commentaries:

It has always been well understood among jurists in this country that the citizens of each state constitute the body politic of each community, called the people of the states; and that the citizens of each state in the Union are *ipso facto* citizens of the United States.

Upon an explanation so extremely guarded—not to say uncertain—had this question rested for forty years.

About the year 1830 began a time of more energetic discussion of citizenship of the United States. This discussion was incident to that of a broader theme, namely, the nature of the Union; but it was none the less thoroughgoing, at least on the side of state rights. The position taken by that side was

that the individual was a citizen of the United States *only* as was a citizen of some one of the several states or territories; in other words, that there was no such thing under the constitution as a citizenship of the United States independent of a citizenship of the several commonwealths. Said Mr. Calhoun in speech on the "force bill," delivered in 1833:

If by citizen of the United States he [Senator Clayton, of Delaware] means a citizen at large, one whose citizenship extends to the entire geographical limits of the country without having a local citizenship in some state or territory, a sort of citizen of the world, all I have to say is that such a citizen would be a perfect nondescript; that not a single individual of this description can be found in the entire mass of the population. Notwithstanding all the pomp and display of eloquence on the occasion, every citizen is a citizen of some state or territory, and such, under an express provision of the constitution, is entitled to the privileges and immunities of citizens in the several states; and it is in this and no other sense that we are citizens of the United States.<sup>1</sup>

A modification of this theory of the state-rights school concerning citizenship of the United States was introduced by Justice Curtis, of the United States Supreme Court, in his dissenting opinion in the *Dred Scott* case, decided in 1857. Justice Curtis took the bold position that citizenship of the United States was dependent entirely upon citizenship of some one of the several states as such. In this he went beyond Mr. Calhoun, who conceded citizenship of the United States in the case of individuals already citizens, not merely of states as such or of territories. Mr. Curtis's language is:

The constitution having recognized the rule that persons born in the several states are citizens of the United States, one of the principles which must be true:

- (1) That the constitution itself has described what native-born persons shall or shall not be citizens of the United States; or
- (2) That it has empowered Congress to do so; or
- (3) That all free persons born within the several states are citizens of the United States; or
- (4) That it is left to each state to determine what free persons within its limits shall be citizens of such state and thereof.

<sup>1</sup> Works II, 242.

the United States. . . . The last of these alternatives, in my judgment, contains the truth. . . . It must be remembered that, though the constitution was to form a government, and under it the United States of America were to be one united sovereign nation to which loyalty and obedience on the one side, and from which protection and privileges on the other, would be due, yet the several sovereign states, whose people were then citizens, were not only to continue in existence, but with powers unimpaired, except so far as they were granted by the people to the national government.

Among the powers unquestionably possessed by the several states was that of determining what persons should and what persons should not be citizens.

Mr. Calhoun and Mr. Curtis agreed in the opinion that the power of Congress, under the constitution, "to establish an uniform rule of naturalization" was simply the power "to remove the disabilities of foreign birth;" the several commonwealths being at perfect liberty to determine in every instance whether or not the individual from whom such disabilities had been removed should become a citizen. This view directly conflicted with the view expressed by Mr. Chief Justice Marshall, in 1832, in *Gassies vs. Ballou*, *viz.*, that a (naturalized) citizen of the United States residing in any state of the Union was a citizen of that state. For, according to Marshall's view, naturalization by the United States and residence within a state were of themselves sufficient to make the naturalized person a citizen of any one of the several states.

Nowhere more clearly than in these respective views of Curtis and Marshall appears the irreconcilable difference which obtained between the advocates of state rights and their opponents on the question of citizenship of the United States. For the former, the primary consideration was always the several states; for the latter, the United States. In the opinion of the one, state citizenship being given, citizenship of the United States ensued as an incident; and in the opinion of the other, citizenship of the United States being given, the ensuing incident was state citizenship. In the contest between the two schools, however, this circumstance was noticeable: the advocates of state rights were as a rule able to make plain what in their judgment

was meant by the expression, citizenship of the United States ; whereas what this expression meant to their opponents these opponents themselves were at no small loss to determine.

In all this the War of the Rebellion and the necessity consequent thereon of some legislation investing the negro race with citizenship, both state and national, produced a change. The believers in a citizenship of the United States which was independent of the citizenship of the several states—a primary United States citizenship, such as that named by Chief Justice Marshall in *Gassies vs. Ballou*, to which state citizenship was a mere incident—had their opportunity and proceeded to improve it. In January, 1866, Senator Lyman Trumbull, of Illinois, introduced in the Senate a bill—afterwards famous as the “civil rights act”—which among other things declared :

All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are citizens of the United States ; and such citizens of every race and color without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right in every state and territory in the United States to make and enforce contracts, to sue, be parties and give evidence, to inherit, purchase, lease, sell, hold and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as enjoyed by white citizens.

Commenting on the above, Mr. Trumbull said :

But, sir, what rights do citizens of the United States have? To be a citizen of the United States carries with it some rights ; and what are they? They are those inherent fundamental rights which belong to free citizens or freemen in all countries, such as the rights enumerated in this bill ; and they belong to them in all the states in the Union. The right of American citizenship means something.<sup>1</sup>

And again :

What are they [*i.e.* the rights of a citizen of the United States]? The right of personal security, the right of personal liberty, and the right to acquire and enjoy property.

<sup>1</sup> Congressional Globe, 1st Sess. 39th Cong. p. 1757.



The side of state rights, in the debate on Mr. Trumbull's bill, was ably represented by Mr. Reverdy Johnson, of Maryland. He took a position on the question of citizenship of the United States which he declared to be identical with that of Mr. Justice Curtis in the Dred Scott case. Thus, when Mr. Trumbull said :

I understand him [Mr. Johnson] to assume the position that even now, since the abolition of slavery, it does not follow that persons born in the United States and born free are citizens of the United States ; and consequently that it is not competent for Congress by law to make them citizens. Did I understand the senator correctly?

Mr. Johnson responded : " Yes, sir, I maintain the doctrine of Judge Curtis." <sup>1</sup> However, on being pressed by Mr. Trumbull to explain his statement of some days back that, slavery abolished, the negroes were just as much citizens of the United States as though slavery had never existed, he conceded that, " so far as the United States are concerned, all persons born within the limits of the United States are to be considered as citizens, and that without reference to the color or race ; after the abolition of slavery, the negro stands precisely in the condition of the white man." <sup>2</sup> What he contended for, he said, was that citizenship of the United States, in consequence of birth, did not make the party a citizen of the state in which he was born unless the constitution and laws of the state recognized him as a citizen ; that the status of a citizen of the United States, not at the same time a citizen of one of the states, differed from the status of a citizen of the United States who as such should be a citizen of the state of his residence.

In many respects this was true ; but, as will be apparent to every one, it was not the doctrine of Justice Curtis — not the doctrine which Mr. Johnson had maintained in his speech, and which he had admitted that he had maintained in reply to the question by Mr. Trumbull. Mr. Johnson's doctrine was in fact a modification both of the doctrine of Mr. Calhoun and of that

<sup>1</sup> Congressional Globe, 1st Sess. 39th Cong. p. 1779.

<sup>2</sup> *Ibid.* p. 1780.

of Justice Curtis. It postulated a citizenship of the United States which was independent of a citizenship of a state, and in so far was identical with the doctrine of Mr. Trumbull. Where it differed from Mr. Trumbull's doctrine was in what it further postulated, *viz.*, a citizenship of the United States which was not only independent of state citizenship but distinct and separate therefrom in its privileges and immunities. This involved a denial of Mr. Trumbull's assertion that, citizenship of the United States being given, state citizenship, with its privileges and immunities, flowed therefrom as an incident, so that it was by virtue of his citizenship of the United States that the individual possessed the rights of personal security, personal liberty and private property.

An interesting and withal somewhat difficult question concerning citizenship of the United States arose in the debate on the civil rights bill. The question regarded the interpretation of the naturalization clause in the constitution, and was this: Supposing the negro not to acquire citizenship through the mere removal of the disabilities of slavery (as is the opinion of many) can he be invested with it under that clause of the constitution which authorizes Congress "to establish an uniform naturalization"? The contention by Mr. Trumbull was that it could, for the reason, first, that "a collective naturalization may take place of a class of persons, natives of the country, of one race, and who, without any act on the part of the government, may be made citizens;"<sup>1</sup> and for the reason, second, that certain instances of such collective naturalization could be cited. Certain Choctaw Indians were made citizens by treaty, November 27, 1830; certain Cherokee Indians were made citizens by treaty, December 29, 1835; and every member of the Seminole tribe of Indians was made a citizen by act of Congress, March 3, 1843. Besides these instances of a collective naturalization of natives, Mr. Trumbull cited some of a collective naturalization of foreigners by annexations of territory. The case of the inhabitants of Louisiana, Florida;

<sup>1</sup> Lawrence's *Wheaton on International Law*,

Other senators, among them Mr. Johnson, did not concur in the opinion of Mr. Trumbull that the negro<sup>1</sup> could be invested with citizenship by naturalization. To them, naturalization, in the sense of that word in the constitution, was simply the removal of alienage according to some uniform rule. The negro was not an alien and hence could not be naturalized. The same thing was said concerning the Indian. As for the inhabitants of Louisiana, Florida and Texas, they in each instance became citizens either by treaty or special act of Congress whereby their alienage was removed, but not in accordance with any uniform rule and therefore not by naturalization.

Those who suggested that the negro could not acquire citizenship through the simple removal of the disability of slavery did so on the ground, largely, that the Dred Scott decision, which denied citizenship to all free persons of color in the United States, descendants of slaves, still stood as a precedent for judicial action. The arguments of this class of persons, reinforced by those of that class who did not regard the negro as in a situation to be naturalized, led to the insertion in the fourteenth amendment of a clause declaring who are citizens of the United States. This amendment originated in the House of Representatives. In the form in which it came to the Senate, the now familiar words: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside" were not a part of it. These words, with the exception of "or naturalized," were proposed as an amendment by Senator Howard, of Michigan. "They settle," said he, "the great question of citizenship and remove all doubt as to what persons are or are not citizens of the United States. This has long been a great desideratum in the jurisprudence and legislation of this country."<sup>1</sup> So far as the negro was concerned, Mr. Howard was clearly correct in his statement that by his amendment (which completely annulled the Dred Scott decision) the great question of citizenship was relieved of doubt. Concerning the

<sup>1</sup> Congressional Globe, 1st Sess. 39th Cong. p. 2890.

Indian, however, as much could not properly be said; for the phrase, "persons subject to the jurisdiction thereof," *i.e.* of the United States, could very reasonably be interpreted to include the Indians. Impressed with this, Senator Doolittle, of Wisconsin, moved to amend Mr. Howard's amendment by inserting after the word "thereof" the words "excluding Indians not taxed," remarking that the senator from Michigan, he presumed, did not intend by his amendment to include the Indians.<sup>1</sup> And by Mr. Trumbull, who earnestly opposed the motion of Mr. Doolittle, the only reason given why Mr. Howard's amendment did not include the Indians was that "subject to the jurisdiction" of the United States meant "subject to the complete jurisdiction" of the United States, which the Indians were not; because the government of the United States did not pretend to take jurisdiction of murders and robberies and other crimes committed by one Indian upon another. Said he: "It is only those persons who come completely within our jurisdiction, who are subject to our laws, that we think of making citizens."<sup>2</sup>

Since the passage of the act of 1885 giving the courts of the territories and of the United States jurisdiction of offences committed by the Indians against one another, and since the Supreme Court's decision in *United States vs. Kagama* in 1886, sustaining said act, the force of the contention by Mr. Doolittle and others is perhaps more apparent.

In view of the later events, particularly of the decision in the Slaughter House cases, it is not a little singular that in all the discussion that took place in Congress, both on the civil rights bill and the measure known as the fourteenth amendment, it occurred to hardly any one to question the correctness of Mr. Trumbull's repeated assertion that citizenship of the United States clothed the individual with the rights of personal security, personal liberty and private property, — those rights which are in their nature fundamental and which are possessed by freemen the world around. That clause of the measure under consideration which declared that "no person shall abridge the

<sup>1</sup> Congressional Globe, 1st Sess. 39th Cong. p. 2890.

<sup>2</sup> *Ibid.* p. 2893.

privileges or immunities of citizens of the United States," a consideration of which would naturally have led to some discussion of the relative character of the privileges and immunities of citizens of a state and of the United States, was not debated at all.<sup>1</sup> Mr. Reverdy Johnson, it is true, discriminated between "the status of a citizen of the United States, who as such should be a citizen of some one of the several states," and that of a citizen of the United States who should not be a citizen of one of the states — a distinction involving all that was afterwards elaborated in the definition of citizenship of the United States given by the United States Supreme Court in the Slaughter House cases. But this he did only under protest, as it were, and in order to reconcile statements otherwise contradictory. His views concerning citizenship were professedly those of Mr. Justice Curtis in the Dred Scott case.

## II.

By the adoption of the fourteenth amendment to the federal constitution, two points were placed beyond controversy:

(1) That citizenship of the United States depends in no way upon citizenship in any state or territory, but merely upon birth in the United States coupled with subjection to the jurisdiction thereof, or upon naturalization.

(2) That the negro is a citizen of the United States.

There are others than the negro, however, whose status as to United States citizenship has perhaps been affected by the adoption of this amendment. The language of the amendment

<sup>1</sup> Mr. Hendricks: "Then I ask what it means when we speak of abridging the rights and immunities of citizenship. It is a little difficult to say and I have not heard any senator accurately define what are the rights and immunities of citizenship."

Mr. Reverdy Johnson: "I am decidedly in favor of the first part of the section which defines what citizenship shall be, and in favor of that part of the section which denies to a state the right to deprive any person of life, liberty or property without due process of law, but I think it quite objectionable to provide that no state shall make or enforce any law which shall abridge the privileges or immunities of citizenship of the United States, simply because I do not understand what will be the effect of that." — *Congressional Globe*, 1st Sess. 39th Cong. pp. 3039-3041.

is: "All persons born or naturalized in the United States, & subject to the jurisdiction thereof, are citizens of the United States," *etc.* Does this mean that United States citizenship attaches, on the one hand, to every individual born subject to the national jurisdiction; and on the other, only to individuals born subject to that jurisdiction? If so, the door is opened to the claim, first, that the Indians are citizens; for, as already pointed out, an act passed in 1885, giving to the courts of territories and of the United States jurisdiction over offences committed by the Indians against each other, has recently been upheld by the United States Supreme Court;<sup>1</sup> and, to the claim second, that children born abroad of citizens of the United States are not themselves citizens; for such children are not born "subject to the jurisdiction of the United States." The question whether or not the language of the fourteenth amendment defining citizenship of the United States is to be construed literally and strictly remains as yet undetermined. The United States Supreme Court has not pronounced upon it, and meanwhile opinions differ. Says Mr. A. C. Freeman, editor of the *American Decisions*.<sup>2</sup>

By the common law, all children born abroad are citizens of the United States if their fathers were at the time American citizens. But such children would not now be citizens if the fourteenth amendment is held to furnish an exhaustive and comprehensive definition of citizenship. That it does furnish such a definition is intimate Justice Miller in the *Slaughter House* cases and by Mr. Justice in his dissenting opinion in the same cases. . . . This conclusion is certainly unfortunate, but perhaps it is the only one which has been adopted.

<sup>1</sup> In the case of *Elk vs. Wilkins*, decided in 1884, the United States Supreme Court held that an Indian, who was born a member of a tribe and who had never been a citizen of the United States within the meaning of the former act, was not a citizen of the United States. The opinion, which was by Mr. Justice Gray, goes the length of saying that a person born in the United States and born a member of an Indian tribe is "subject to the jurisdiction of the United States." From this it follows that the judgment of the court, Justices Harlan and Wood strong dissenting, in the case of *United States vs. Kagama*, decided in 1886, the words, "subject to the jurisdiction of the United States," as applied to the Indians, must, it would seem, be given an inclusive interpretation than was before given them.

<sup>2</sup> Note to *Ludlam vs. Ludlam*, 84 Am. Dec. 212.

Says Mr. Justice Field in *In re Look Tin Sing*:<sup>1</sup> "Only those thus subject [to the jurisdiction of the United States] by their birth or naturalization are within the terms of the [fourteenth] amendment." Mr. Benjamin Abbott, however, thinks differently from Mr. Freeman and Judge Field and remarks as follows :

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. This appears at first sight as if it were intended as an exhaustive delineation of the persons who are citizens, so that no person not included in the description can be deemed to be one. And this effect has sometimes been imputed to it. We think, however, it ought not to be so understood. . . . All children heretofore born or hereafter born out of the United States, whose fathers were or may be at the time of their birth citizens of the United States, except children of fathers who never resided in the United States (acts of April 14, 1802, and Feb. 10, 1855), and any woman married to a citizen (act of Feb. 10, 1855) are declared to be citizens.<sup>2</sup>

Likewise contends Dr. Francis Wharton :

The term "subject to jurisdiction" must be construed in the sense in which the term is used in international law as accepted in the United States as well as in Europe. And by this law the children born abroad of American citizens are regarded as citizens of the United States, with the right, on reaching full age, to elect one allegiance and repudiate the other, such election being final.<sup>3</sup>

Should the literal and strict construction of the language of the fourteenth amendment defining United States citizenship be finally held to be the correct one, the law of the United States respecting citizenship would undoubtedly be at variance with the principles both of the common law and of international law as set forth in the paragraph introductory to this article.

But the question : Who are citizens of the United States ? is not the only question debated before the adoption of the fourteenth amendment which survived to later years. The question involved with it, namely : What are the privileges and

<sup>1</sup> S. C. 21 Fed. Rep. 905.

<sup>2</sup> Law Dictionary, vol. 1, pp. 225, 226.

<sup>3</sup> Conflict of Laws, sec. 10.

immunities of citizens of the United States? likewise survive. This question, however, received an answer from the Supreme Court of the United States in the *Slaughter House* case decided in 1873, and is therefore no longer open in the same sense with the question first referred to. By the *Slaughter House* decision the privileges and immunities appurtenant to citizenship of the United States were determined to be different and distinct from those appurtenant to state citizenship. The latter were described as those privileges and immunities which are fundamental in character :

Which belong of right to the citizens of all free governments and which have at all times been enjoyed by citizens of the several states which compose the Union from the time of their becoming free, independent and sovereign ; . . . [as, for example,] protection by the government ; with the right to acquire and possess property of every kind and to pursue and obtain happiness and safety, subject nevertheless to such restrictions as the government may justly prescribe for the general good of the whole.

In contrast with privileges and immunities such as these, the privileges and immunities of citizenship of the United States were described as merely those special and limited privileges and immunities arising from the special and limited scope under the constitution, of the federal or United States authority. Examples were given as follows :

To come to the seat of government to assert any claim upon government, to transact any business with it, to seek its protection, share its offices, to engage in administering its functions.

Free access to its seaports, through which all operations of commerce are conducted ; to the sub-treasuries, land offices and of justice in the several states.

To demand the care and protection of the federal government life, liberty and property when on the high seas or within the jurisdiction of a foreign government.

To peaceably assemble and petition for redress of grievances.

The writ of *habeas corpus*.

To use the navigable waters of the United States, however, penetrate the territory of the several states.

To become a citizen of any one of the several states by residence therein.



That the privileges and immunities of citizenship of the United States were not held to include the fundamental rights of life, liberty and property was the cause of much criticism of the decision in the Slaughter House cases and of earnest protest against it. Without these rights, citizenship of the United States was deemed by many a status void alike of substantial rights and of honor.

Some idea of the revolutionary lengths to which the United States Supreme Court was thought to have gone, in the definition of citizenship of the United States given in the Slaughter House cases, may be gained from the expressions of Mr. Justice Field, Mr. Justice Bradley and Mr. Justice Swayne in their dissenting opinions. Said Mr. Justice Field :

It [the fourteenth amendment] assumes that there are . . . privileges and immunities which belong of right to citizens as such and ordains that they shall not be abridged by state legislation. If this inhibition has no references to privileges and immunities of this character, but only refers, as held by the majority of the court in their opinion, to such privileges and immunities as were before its adoption specially designated in the constitution or necessarily implied as belonging to citizens of the United States, it was a vain and idle enactment, which accomplished nothing and most unnecessarily excited Congress and the people on its passage. With privileges and immunities thus designated or implied no state could ever have interfered by its laws, and no constitutional provision was required to inhibit such interference. . . . But if the amendment refers to the natural and inalienable rights which belong to all citizens, the inhibition has a profound significance and consequence.

Said Mr. Justice Bradley :

I think sufficient has been said to show that citizenship is not an empty name, but that, in this country at least, it has connected with it certain rights, privileges and immunities of the greatest importance. And to say that these rights and immunities attach only to state citizenship, and not to citizenship of the United States, appears to me to evince a very narrow and insufficient estimate of constitutional history and the rights of men, not to say the rights of the American people.

Said Mr. Justice Swayne :

The privileges and immunities of a citizen of the United States include, among other things, the fundamental rights of life, liberty and property,

and also the rights which pertain to him by reason of his membership of a nation. . . . Without . . . authority [to secure the above enumerated rights and privileges] any government claiming to be national is glaringly defective. The construction adopted by the majority of brethren is, in my judgment, much too narrow. It defeats by a limitation not anticipated the intent of those by whom the instrument was framed and of those by whom it was adopted. To the extent of limitation, it turns, as it were, what was meant for bread into a stone.

That the decision in the Slaughter House cases defeated a limitation not anticipated the intent of those by whom the fourteenth amendment was framed is doubtless true. The fact that Mr. Trumbull's interpretation of the scope of citizenship of the United States—an interpretation rejected by the court in these cases—was acquiesced in by virtually the whole Congress shows it to be so. What the Supreme Court did in the Slaughter House decision was so to take advantage of the wording of the fourteenth amendment, in certain clauses, as to preserve to the several states at least some of those powers which they had for eighty years possessed, and without which their very existence, in any considerable sense, must terminate.

Said Mr. Justice Miller, giving the opinion of the court :

Was it the purpose of the fourteenth amendment, by the simple declaration that no state should make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, to transfer the security and protection of all the civil rights which were mentioned [*i.e.* of personal security, personal liberty and private property] from the states to the federal government? And where it declares that Congress shall have the power to enforce that article, was it intended to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the states? All this and more follow, if the proposition of the plaintiffs in error be sound. . . . argument, we admit, is not always the most conclusive which can be drawn from the consequences urged against the adoption of a particular construction of an instrument. But when, as in the case before us, the consequences are so serious, so far-reaching and pervading, and the departure from the structure and spirit of our institutions is so great, as to effect a to fetter and degrade the state governments by subjecting them to the control of Congress; . . . when in fact it radically changes the theory of the relations of the state and federal gov-

each other and of both these governments to the people; the argument has a force that is irresistible in the absence of language which expresses such a purpose too clearly to admit of doubt.

The stress laid by the court in the Slaughter House cases upon the distinct and separate character of citizenship of the United States and citizenship of a state suggests a query not raised or considered in those cases, *viz.*: Recognizing it as a fact that a person can be a citizen of the United States and at the same time not be a citizen of a state, is the converse of the proposition true? Can a person be a citizen of a state and at the same time not be a citizen of the United States? In other words, is it true, necessarily, that a citizen of a state is *ipso facto* a citizen of the United States? Let Mr. Benjamin Abbott reply. He says:

If citizenship can, since the fourteenth amendment, be forfeited, as unquestionably it might be before; if a loss of citizenship may be imposed by a statute as a penalty for an offence; it would seem that, under possible legislation, a person convicted under an act of Congress imposing disfranchisement might cease to be a citizen of the Union, yet, because the offence was against the United States alone or because there was no corresponding penal law in his state, he might be deemed to continue a citizen of the state.<sup>1</sup>

But is it not possible in another way for a person to be a citizen of a state without being a citizen of the United States? Is it not within the power of a state to grant to an alien residing within its limits all the rights and privileges enjoyed by its native-born or naturalized citizens, so far as such rights and privileges are under the control of that state, — in other words, to naturalize an alien to the extent of its own exclusive jurisdiction? If so, he would be a citizen of that state, yet not a citizen of the United States; for he could only become the latter by complying with the requirements of some uniform rule of naturalization prescribed by the United States. Said the United States Supreme Court, through Chief Justice Taney, in the Dred Scott case:

<sup>1</sup> Law Dictionary, vol. 1, p. 226.

We must not confound the rights of citizenship which a state may confer within its own limits and the rights of citizenship as a member of the Union. . . . He [a person] may have all the rights and privileges of a citizen of a state and yet not be entitled to the rights and privileges of a citizen in any other state. . . . Each state may . . . confer them [*i.e.* the rights and privileges of state citizenship] upon an alien or any one it thinks proper, or upon any class or description of persons, yet he would not be a citizen in the sense in which that word is used in the constitution of the United States, nor entitled to sue as such in one of its courts, nor to the privileges and immunities of a citizen in the other states. The rights which he would acquire would be restricted to the state which gave them. . . . No state since the adoption of the constitution can by naturalizing an alien invest him with the rights and privileges secured to a citizen of a state under the federal government, although, so far as the state alone was concerned, he would undoubtedly be entitled to the rights of a citizen and clothed with all the rights and immunities which the constitution and laws of the state attached to that character.

But lest the preceding opinion from the Dred Scott case be unfavorably regarded by some on account of its source, a brief passage from Mr. John M. Pomeroy's *Constitutional Law* (paragraph 390) will be quoted. It is as follows :

While it is settled, then, upon principle, authority and continuous practice, that the Congress of the United States has exclusive authority to make rules for naturalization, it must not be understood that the states are deprived of all jurisdiction to legislate respecting the rights and duties of aliens. They may permit or forbid persons of alien birth to hold, acquire or transmit property ; to vote at state or national elections, *etc.* These capacities do not belong to United States citizenship as such. Congress would transgress its powers were it to assume to make rules upon these subjects.

It is a question of some speculative interest, whether citizenship of the United States, as defined in the Slaughter House cases, existed prior to the adoption of the fourteenth amendment to the constitution or was created by it. If the views of Mr. Calhoun or of Mr. Curtis as to the scope of citizenship of the United States were, at the time expressed, well founded, citizenship of the United States was created by the fourteenth amendment. For, according to the views of each of these dis-

tinguished men, local citizenship was the *sine qua non* of citizenship of the United States ; whereas, according to the definition in the Slaughter House cases, there may be citizenship of the United States without any local citizenship whatever. Mr. Reverdy Johnson gave pointed expression to the views of those who, following out Calhoun and Curtis, deemed the fourteenth amendment to have created citizenship of the United States, when he said :

I am, however, by no means prepared to say, as I think I have intimated before, that being born within the United States, independent of any new constitutional provision on the subject, creates the relation of citizen to the United States.<sup>1</sup>

The great weight of opinion, however, is to the effect that citizenship of the United States was not created but simply declared by the fourteenth amendment. Mr. Howard and Mr. Trumbull both so contended in the Senate ; likewise Mr. Henderson, of Missouri, who said :

Those persons who are to be made citizens by this amendment are the persons and none others who have ever been citizens of the United States, under a fair and rational interpretation of the constitution, since its adoption in 1789 [*sic*].<sup>2</sup>

It may properly be observed, in concluding, that there doubtless never has been a time in the history of the government when a person not either a negro or an Indian, born within the United States, whether a citizen of some state or territory or not, could not in a just case have secured for himself for the asking the protection of the federal power in his rights of safety and property, at least upon the high seas or in a foreign country. If so, citizenship of the United States, as now authoritatively defined, was not created by the fourteenth amendment to the constitution, but has always existed since the adoption of the constitution itself.

IRVING BERDINE RICHMAN.

<sup>1</sup> Congressional Globe, 1st Sess. 39th Cong. p. 2893.

<sup>2</sup> *Ibid.* p. 3033.

## LOCAL GOVERNMENT IN PRUSSIA. II.

IN the preceding number of the *POLITICAL SCIENCE QUARTERLY* the attempt was made to trace very briefly the history of local government in Prussia during the present century and to sketch the prominent characteristics of the reform movement of 1872-1883. It was shown that for the purposes of local administration the country is divided into provinces — which in their turn are subdivided into government districts — and into circles. In each of these divisions are placed authorities, some charged with administrative business affecting the country as a whole, some with matters of purely local concern. It is now proposed to examine these authorities in detail and to consider how far the new organization guarantees to the people that self-government which was one of the main ends of the reform. The local authorities may be classified as provincial and circle authorities.

### I. *Provincial Authorities.*

The historical development of institutions in Germany has brought about a partition in the work of administration. While in England the absolutism of the early Norman monarchy crushed out all local autonomy and reduced the divisions of the kingdom to the position of mere administrative circumscriptions, without juristic personality and without affairs of their own to manage, — administrative circumscriptions in which all administration was attended to by royal officers, — in Germany there were many important districts which were regarded as public corporations, having their own duties to perform and their own officers — not in any sense royal officers — to discharge these duties. During the period of greatest centralization these local corporations had a certain degree of autonomy and a certain sphere of action which was recognized as their own — as distinct from the sphere of action belonging to

the central government. They had their own officers to attend to their own business. The central government, likewise, had its administrative districts — which often were not co-terminous with the districts of these local corporations — and its officers, who were charged with that part of the work of administration which was held to concern the country as a whole. As the purpose of the reform of 1872 was to decentralize the administration of government, this distinction of the two spheres of administrative work has not been abolished but has rather been accentuated. More matters have been recognized as belonging to the purely local administration of the provinces and circles. Prussia has therefore at the present time, contrary to the condition of things in England and in this country, on the one hand a well recognized sphere of local action in which the local corporations have considerable autonomy, and on the other hand a sphere of state action in which the central government, if it does not act directly, still has very large powers of control. The existence of these two spheres of action and, in some cases, of a separate set of authorities for each sphere, makes the system of local government very complicated, and its presentation a work of great difficulty. The reform of 1872 has endeavored to simplify matters: the divisions for the purposes of general state administration have in all cases been made co-terminous with the divisions for the purposes of local administration, and the authorities for the two spheres of administrative action have in some cases been consolidated into one authority. In the province, however, all attempts at such consolidation were unsuccessful; so that in our examination of the provincial authorities we must distinguish between what are called the *Behörden der allgemeinen Landesverwaltung*, i.e. the authorities for central administration, and the *Organe der Provinzialverbände*, i.e. the organs or authorities for local administration. Among the authorities for the general administration of the country are to be mentioned:

*The Governor (Oberpräsident).* This officer is appointed and dismissed by the king at his pleasure. He is a member of what is called the higher administrative service, i.e. he must

have passed through the required training, receives a large salary and devotes his entire time to his work. He is thus a purely professional officer. He is the agent of all the executive departments of the central government at Berlin and, as such, agent, must report to each of them every year and execute all commands which they may send him. These officers, according to the original intention of Stein and Hardenberg, were to be permanent representatives of the central government, and their decisions were to be regarded as the decisions of the ministers; but at the time the late reform was undertaken they had obtained for themselves, as a result of later legislation and of administrative practice, the position of a hierarchical instance immediately between the central executive departments and the "governments" in the government districts, with the deplorable result that in many administrative matters there were five instances of appeal.<sup>1</sup> For this reason the demand was made that the office be abolished. But there were so many objections to complying with such a demand that it was decided to retain the office, assigning to it, however, the position which Stein and Hardenberg had originally marked out for it. The central executive departments were relieved of many matters of detail and the decision of these matters in last instance was intrusted to the provincial governors. In several cases, it is true, the governors are still to be regarded as an intermediate instance in the administrative hierarchy between the ministers and the lower authorities; but their characteristic position is now that of permanent representatives of the ministers in the provinces, from whose decision there is no appeal. As representatives of ministers in the provinces, the governors are intrusted with considerable discretion of action in times of extraordinary danger from war or other causes.<sup>2</sup> They exercise either in second or first instance (but always at the same time in last instance) large powers of supervision over the actions of sub-ordinate central officers and authorities, as well as over the admini-

<sup>1</sup> Memorial presented to the lower house of the Prussian legislature in 1875; cited in Stengel, *Organisation der Preussischen Verwaltung*, p. 317.

<sup>2</sup> *Ibid.* p. 318.

<sup>3</sup> Instruction of Dec. 1875.



tion of the local affairs of various important municipal corporations, such as the province, the circle and certain of the larger cities.<sup>1</sup> As representatives of the central government they also appoint the justices of the peace (*Amtsvorsteher*).<sup>2</sup> They attend to the administration of all business which interests the entire province or more than one government district. For example: they issue a long series of police ordinances;<sup>3</sup> supervise the churches;<sup>4</sup> transact all business which relates to an entire army corps;<sup>5</sup> act as the presidents of a series of provincial councils or boards, such as the provincial council, the provincial school board and the provincial board of health.<sup>6</sup>

*The Provincial Council.* Up to 1875, when the late reform was introduced into the provincial administration, the governor, himself a professional officer, transacted the business of the central government in the province unchecked in the performance of his duties by the control of any popular authority. But one of the main objects sought by the reform was the introduction of a lay element into the administration of affairs affecting the country as a whole. This end was attained by the formation of the provincial council. This body consists of the governor, as its president; a single councillor of a professional character, *i.e.* one who satisfies all the requirements for entrance into the higher administrative service, who is salaried and who devotes his entire time to his work; and five lay councillors, citizens of the province, *i.e.* ordinary citizens without any professional education and unsalaried. The professional councillor is appointed by the minister of the Interior, and his term of office is practically for life. The lay members of the council are appointed by the provincial committee—a popular body—from among the citizens of the province eligible for the position of member of the provincial diet. Their term of office

<sup>1</sup> Allgemeines Landesverwaltungsgesetz of July 30, 1883, § 10; Kreisordnung of 1872, § 177; Zuständigkeitsgesetz of July 26, 1880, § 7.

<sup>2</sup> K. O. of 1872, §§ 56–58.

<sup>3</sup> With the consent of the provincial council, of which later. A. L. V. G. §§ 137, 139.

<sup>4</sup> Loening, *Deutsches Verwaltungsrecht*, p. 83, with authorities cited.

<sup>5</sup> *Ibid.*

<sup>6</sup> Instruction of 1825, § 3; A. L. V. G. § 10.

is six years.<sup>1</sup> In the organization of this body, it will be noticed, the lay element predominates. Provision is made for professional members simply in the hope that by reason of their knowledge and experience the business of the council may be more wisely and more quickly transacted.

The duties of the council are of three classes. In the first place it exercises a lay control over the action of the provincial governor, *e.g.* its consent is necessary for all his ordinances.<sup>2</sup> In the second place it acts as an instance of appeal from certain decisions of inferior authorities, such as the district committee.<sup>3</sup> In the third place it decides as an executive authority certain administrative matters; *e.g.* the number, time and duration of certain markets,<sup>4</sup> and questions relative to the construction of certain roads.<sup>5</sup> Of these duties, those of the first class are by far the most important, as it is through their performance that a popular lay control is exercised over the bureaucratic professional administration of central matters in the province.

*The Government and the Government President.* Each province is divided into from two to six government districts. At the head of each of these districts is a government (*Regierung*). This is composed exclusively of professional officers, *vis.* the president, several division chiefs, councillors and assistants. They are all appointed by the central government at Berlin and, like the governors of the provinces, belong to the higher administrative service.

The competence of the governments originally (and at the time of the late reform) embraced all matters of internal administration and all other matters, such as the finances and military affairs, in so far as these could be attended to at all by territorially limited authorities and in so far as special authorities had not been established to attend to them.<sup>6</sup> This last was not often the case. Separate authorities had indeed been established for the administration of the customs, but this was the

<sup>1</sup> A. L. V. G. §§ 10-12.

<sup>2</sup> A. L. V. G. § 137; Z. G. § 51.

<sup>3</sup> A. L. V. G. § 121.

<sup>4</sup> Z. G. § 127.

<sup>5</sup> Stengel, *Organisation der preussischen Verwaltung*, p. 435.

<sup>6</sup> Ordinance of Dec. 26, 1808.

most important instance. In general all matters of central administration attended to in the localities were attended to by the governments. They were by far the most important administrative authorities in the entire Prussian system ; and it was due to their excellent organization and wise action that the great economical reforms of the beginning of the century had been successfully carried through. They acted under the direction of the central authorities at Berlin or that of the representatives of the central authorities in the provinces, *viz.* the provincial governors. Finally, in addition to the actual administrative duties which they performed, they exercised a control over the various authorities of the central administration immediately subordinated to them and over the various local public corporations.

With the introduction of the reform measures, however, the importance of the governments has somewhat decreased, owing to the establishment of other more popular authorities and to the modification which thereby became necessary in their own organization. In the "district committee" a lay authority was established in the government district<sup>1</sup> similar to the provincial council in the province. This innovation reduced the government so much in importance that it was felt advisable to abolish its most important division, that of the interior, which had charge of the police administration (*i.e.* the issue of police ordinances and orders) and of the supervision of the inferior authorities both of the central and of the local administration. All of these duties were assigned either to the government president, acting alone or under the control of the district committee, or to the district committee as such. The government president had been before this simply the president of a board in which lay the real power of decision. By the reform he was raised to the position of an officer who has in certain cases the power of independent action, although in many cases he acts under the control of the district committee. For all other matters within the competence of the government the old organization is the same as before ; *i.e.* in school, tax and church matters the gov-

<sup>1</sup> A. L. V. G. § 153.

ernment still acts as a board of which the government president is the presiding officer.

The government president thus occupies a double position. He is either an officer with independent powers of action, or he is the presiding officer of a board in which lies the real power of decision. But wherever he has independent powers of action, he is subjected to the control of the lay district committee, of which he is at the same time the president. The result is an extremely complicated organization — which, however, answers the purposes sought by the reform. The matters left in the competence of the existing divisions of the government are matters which are not thought to be proper subjects for popular administration. The management of the domains of the state, of the state taxes and of education (*i.e.* of its pedagogical side), and the control over the churches are not regarded as subjects in which a popular control would lead to advantageous results; but the management of police matters and the supervision of the subordinate authorities, particularly of the local corporations, are matters in which it is particularly desirable that the people should have some influence.

*The District Committee.* Mention has already been made of the district committee as the body through which the popular lay influence has been introduced into the administration. It is to the government president just what the provincial council is to the provincial governor. It is formed of the government president, as its presiding officer, and six councillors.<sup>1</sup> Two of these are professional in character, are appointed for life by the king, and must be qualified the one for the judicial service, the other for the higher administrative service. One of these professional councillors is, at the time of his appointment, designated as the deputy of the government president in his capacity as the presiding officer of the committee: he is called the administrative court director, and presides over the deliberations of the committee when it acts, as it may, as an administrative court. The other four members are lay men and are elected by the provincial committee from among

<sup>1</sup> A. L. V. G. § 28.

inhabitants of the district not professional officers. It will be noticed that the character of this committee is the same as that of the provincial council. It is distinctively a lay authority, although it has a sufficient number of professional members to ensure the rapid and wise discharge of business.

The district committee subserves in the main the same purpose as the provincial council, but its competence is more extended. Its main function is to exercise a control over the actions of the government president, so that the administration may be made popular in character.<sup>1</sup> Thus all police ordinances, the issue of which is the chief function of the government president when acting alone, need the consent of the district committee.<sup>2</sup> But this committee has positive functions also. In many cases it acts in first instance; *e.g.* it exercises a large supervision over the acts of inferior authorities and of municipal corporations, especially of the large cities. It has also an appellate jurisdiction. This is of two kinds, one administrative and the other judicial. In the first case the committee acts simply as the hierarchical superior of the lower authorities; the procedure before it is quite informal; and its decision, in making which it is governed mainly by the question of expediency, is incorporated into a resolution. Acting in this capacity, it is presided over by the government president. In the second case, *i.e.* when it hears appeals of a judicial character, it is regarded as an administrative court and is presided over by the administrative court director. The procedure before it is then quite formal in character; in making its decision it is governed by the law alone; and its decision takes on the form of a judgment, from which appeal may be taken to the superior administrative court at Berlin. In what cases it acts as an administrative authority, and in what other cases it acts as an administrative court, is decided by the statutes.<sup>3</sup> The general principle would seem to be that where rights of individuals are involved, the committee acts (hears appeals) as an administrative court. In its double capacity of authority and court, its jurisdiction is very large; and its establishment has done much to weaken the

<sup>1</sup> Z. G. § 13.

<sup>2</sup> A. L. V. G. § 139.

<sup>3</sup> Stengel, pp. 330, 415.

importance of the "government," which was absolutely professional in character, and to establish that lay control over the administration which was so much desired by the leaders of the reform movement.

Such are the provincial authorities charged with that part of the administration known as the central administration (*allgemeine Landesverwaltung*). The governor and the provincial council represent the central authority; their action may be regarded as the action of the ministers. The government, the government president and the district committee are regarded as subordinate to the governor and the provincial council, by whom their action is largely controlled. In both instances, the salient point of the new system is the subjection of the professional administration — an administration which, before the late reform, was wholly bureaucratic — to an extensive lay control.

Matters of purely local interest to the province — matters which the law recognizes as falling within the domain of provincial autonomy — are attended to by a second class of authorities, *viz.* the organs of the provincial municipal corporation (*Organe des Provinzialverbandes*). These authorities are the direct successors of the old feudal estates of the province which have come down from the middle ages. The original Stein-Hardenberg legislation did very little to develop them: it was felt that the feudal elements were too strong in them to permit of any healthy development. After Hardenberg's death they received increased powers. They were so organized, however, as to put their entire control into the hands of the large owners of land. The main purpose of the reform movement has been so to reorganize them that they might be entrusted with a large part of the work which was then being done by the central administration and which was susceptible of decentralization. The main point in this reorganization is the provision for the representation of all classes of the people within the province. The old system of representation was completely done with and new authorities were added. This was done by province law of 1875. This law formed:

*A Provincial Diet* or legislature. This is composed of

representatives from each of the circles into which the province is divided, the number of representatives depending upon the population of the circles.<sup>1</sup> These representatives are elected by the circle diets of the rural circles and the municipal authorities of the urban circles. The latter, it will be remembered, are all cities of 25,000 or more inhabitants.<sup>2</sup> This method of election assures the larger cities a fair representation in the provincial diet ; and the method of electing members of the diets of the rural circles, as will be shown, is such as to guarantee to the smaller cities and the other social interests a voice in the selection of the members of these diets and, as a result, representation in the provincial diet also. The term of office of the members of the provincial diet is six years ; and the qualifications of eligibility are German citizenship, residence in the province or the possession of landed property therein for at least a year, good moral character and solvency.<sup>3</sup>

The diet is called together by the king once in two years and as many other times as its business makes its meetings necessary.<sup>4</sup> The governor of the province attends to this matter for the king and, as the royal representative, opens its sessions and has the right to speak therein.<sup>5</sup>

The functions of this body relate almost exclusively to the purely local matters of the provincial administration. It decides what local services shall be carried on by the provincial corporation in addition to those which have been positively devolved upon it by law, and it raises the funds necessary for the support of the provincial administration.<sup>6</sup> Its decisions, says Dr. Gneist,

affect the construction and maintenance of roads ; the granting of moneys for the construction and maintenance of other means of public communication ; agricultural improvements ; the maintenance of state almshouses, lunatic asylums, asylums for the deaf and dumb and blind and others, artistic collections, museums and other like institutions. . . . The provincial diet votes the provincial budget, creates salaried provincial offices and deliberates upon provincial by-laws.<sup>7</sup>

<sup>1</sup> Provinzordnung §§ 9, 10.

<sup>3</sup> *Ibid.* § 17.

<sup>5</sup> *Ibid.* § 26.

<sup>2</sup> *Ibid.* §§ 14, 15.

<sup>4</sup> *Ibid.* § 25.

<sup>6</sup> *Ibid.* §§ 34-44.

<sup>7</sup> Gneist, in *Revue générale du droit et des sciences politiques*, Oct. 1886, p. 262.

These by-laws, it must be added, simply regulate minor points in the organization of the province which have not been already fixed by law, such as the details regarding the elections. They must be approved by the king.<sup>1</sup> In addition to the duties imposed upon the province by law, the diet may assume such other duties as it sees fit which are not in direct opposition to the purposes of the provincial organization.<sup>2</sup> Finally, the diet elects all the executive officers of the province regarded as a municipal corporation.<sup>3</sup>

From this description of its duties it will be seen that the provincial diet determines largely what the character of provincial administration shall be. The law of course imposes certain duties upon the province which it must perform and which it may be compelled to perform, but the law does not limit its competence. On the contrary, the law allows it to do almost anything which falls within the scope of what is recognized as proper for provincial administration. There will naturally be great variety in the various provinces. A province situated on the seacoast needs different institutions from one that lies inland. The social conditions in the various provinces are so different that great differences in their institutions will result from these causes alone. The manufacturing provinces in the West will need institutions quite other than those of the agricultural provinces of the East. Under the new system, which imposes upon the province much of the work formerly done by the central administration and leaves it free to do as much more as it will, the widest opportunity is given for development in accordance with particular local needs.

*The Provincial Committee.* This is the executive authority of the province as a municipal corporation. The number of its members varies, according to the by-laws of the different provinces, between seven and thirteen.<sup>4</sup> They are elected by the diet from among those citizens of the empire who are eligible to the provincial diet.<sup>5</sup> The term of office is six years, of the members retiring every three years.<sup>6</sup> The membe

<sup>1</sup> P. O. § 119.

<sup>2</sup> Loening, *Deutsches Verwaltungsrecht*, p. 21

<sup>3</sup> P. O. § 41.

<sup>4</sup> *Ibid.* § 46.

<sup>5</sup> *Ibid.* § 47.

<sup>6</sup> *Ibid.* § 1.



this committee (and the same rule applies to the members of the provincial diet) receive no pay or salary of any kind for the performance of their duties: the province only repays their necessary expenses.<sup>1</sup>

The duties of this committee are to carry on the administration of the province in accordance with the general principles laid down by the provincial diet in its resolutions.<sup>2</sup> Its subordinate executive officer, on whom the detailed or current administration falls, is the provincial director, who is elected by the diet and must be approved by the king, and who is a salaried officer.<sup>3</sup> His position is that of a superintendent of the entire provincial civil service for purely local matters. He has no discretionary powers: the provincial committee is the discretionary executive of the province, and the director simply carries out its decisions. Service as provincial officer, it should be added, is never obligatory.

Such are the officers of the province as a municipal corporation. The original draft of the bill which afterwards became the provincial law made this provincial organization less complicated than it now is, providing that the provincial committee should also perform the duties which have been devolved upon the provincial council; but the Conservative party in the House of Lords, whose interests were at stake, felt that this plan would not allow them sufficient independence in the management of purely provincial affairs, and insisted upon a complete separation of the general and local functions of administration in the province. The result was the formation of the separate authorities described above.<sup>4</sup>

Before closing this account of the administration of the province, it should be noted that the greater part of the revenue of the province as a municipal corporation comes from the funds or grants in aid which were given by the central government to the province at the time of the reorganization of the provincial administration. The purposes for which such grants shall be spent are designated in the laws. In order, however, to permit the provinces to develop in accordance with their particular

<sup>1</sup> P. O. § 100.<sup>2</sup> *Ibid.* § 45.<sup>3</sup> *Ibid.* § 87.<sup>4</sup> Stengel, p. 150.

needs, the law provides that the provinces may raise other money by levying taxes.<sup>1</sup> These taxes shall consist of lump sums of money, which the circles forming part of the province are to pay into the provincial treasury, and whose amount is to be fixed in accordance with the amount of direct taxes paid to the central government by the people residing within the circles.<sup>2</sup> The circle and not the individual is the taxpayer in the provincial system of finance, just as the circle and not the individual is the voter for representatives to the provincial diet. In order, however, to prevent the provincial diet from overburdening the circles, it is provided that where the province shall demand from the circle more than fifty per cent of the amount of state taxes levied in the circle, the consent of the supervisory authority of the central government (the ministers of the Interior and Finance) shall be obtained.<sup>3</sup> The making of loans is subject to the same limitation. This is the method which has all along been adopted to restrict the actions of the provincial diet, *viz.* a central administrative control. Thus the by-laws which the provincial diet may issue, filling up details in the law, need for their validity the approval of the central government, often the approval of one of the ministers.<sup>4</sup> Again, if any provincial authority endeavor to do anything which is outside of its competence, the supervisory officer, *viz.* the governor, has the right to suspend its action. Finally the king may dissolve the diet, and the governor may open an appropriation and levy the necessary taxes for all provincial charges for which the diet has neglected to make provision.<sup>5</sup> The provincial authorities may usually appeal from the decision of the supervisory authority to the superior administrative court at Berlin. The central control is thus prevented from becoming arbitrary.

## II. *The Circle Authorities.*

While the law recognizes, in the case of the circle as in the case of the province, that there is a sphere of local and a sp

<sup>1</sup> P. O. § 105.

<sup>2</sup> *Ibid.* § 107.

<sup>3</sup> *Ibid.* § 119.

<sup>4</sup> *Cf. supra*, p. 134.

<sup>5</sup> P. O. §§ 121 and 122.

of central administrative action which are quite distinct, it still has not seen fit to provide separate authorities for each of these different spheres of action, but on the contrary has conferred on the same authorities the right to act in both spheres. But when these authorities act in purely local matters they are not subjected to the same strict control as when they act for the central administration. It must further be noted that while in the province the authorities for the central administration are more important than the authorities for the local administration, the functions of the circle authorities which relate to the sphere of local administration are more important than those which relate to the sphere of central administration. The work of the circle is essentially local in character, while the work of the province affects rather the country as a whole. As the law governing the organization of the circle authorities was the model on which was formed the law governing the provincial administration, it is only natural to find that the same general principles lie at the basis of both laws. That is, there is the same combination of professional and lay elements which has already been pointed out in the foregoing description of the provincial authorities. The only difference is that one set of authorities performs all the duties in the circle which two sets of authorities perform in the province. The circle authorities are the landrath, the circle committee and the circle diet.

*The Landrath* is the agent of the central administration, discharging in the administrative district of the circle about the same duties that are performed in the province by the governor and in the government district by the government and the government president. He is the subordinate of the government president. He is at the same time the executive for the current administration of the circle as a municipal corporation. In this capacity he is the subordinate of the circle committee, of which he is also president.<sup>1</sup> He is a professional officer, *i.e.* he must be qualified for the higher administrative service. He is appointed by the king, — as a rule, from a list of proper persons drawn up by the circle diet and presented to the king for his

<sup>1</sup> K. O. § 76.

action.<sup>1</sup> The king, however, is not bound by the list so presented, but may make his selection from persons not nominated by the diet. The landrath receives a comparatively large salary and devotes his entire time to his work.

The Circle Committee, also, is an agent as well for the center as for the local administration of the circle.<sup>2</sup> It occupies the administrative district of the circle the same position that the district committee occupies in the government of the district and the provincial council in the province. That is, it has certain executive functions to perform and exercises a professional or lay control over the actions of the professional landrath. In so far it acts as an authority of the central administration.<sup>3</sup> As agent of the circle as a municipal corporation it occupies the same position in the circle that the provincial committee occupies in the province. That is, it is the discretionary executive of the circle and has under its direction the landrath, who, as has been said, attends to the detailed administration of the circle as a municipal corporation.<sup>4</sup> It conducts the administration of the circle in accordance with the resolutions of the circle diet, which body finally decides how the circle administration shall be conducted.<sup>5</sup> The circle committee is, as has been intimated, a distinctively lay authority. It is composed of the landrath as its president and of six members chosen by the circle diet from among the members of the circle.<sup>6</sup> The term of service is six years,<sup>7</sup> and the office is obligatory in that a fine is imposed for refusal to serve for at least half the regular term.<sup>8</sup> As an authority for the central administration, it has under its direction the various justices of the peace, who, it will be remembered, are appointed by the governor of the province. As the executive authority of the circle as a municipal corporation, it has under its direction the landrath and all the other circle officers.

It has been explained in the preceding article that the men who directed the reform legislation in Prussia regarded

<sup>1</sup> K. O. § 74.

<sup>2</sup> *Ibid.* § 130.

<sup>3</sup> Stengel, *l. p.* 339, 342.

<sup>4</sup> K. O. §§ 134, 137.

<sup>5</sup> *Ibid.* § 134.

<sup>6</sup> *Ibid.* § 131.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

proval the English administrative system as then existing, and intended to copy to a certain extent English models in the new organization which they formed. The circle committee is a good example of this desire and of its accomplishment. It was modelled largely upon the English petty and special sessions of the peace. It performs in Prussia many of the duties, especially those of a police character, which its English prototype performed in England. Thus it is the general rural licensing authority, is a highway authority, and acts as the supervisory instance over the actions of the Prussian justice of the peace — which office is likewise constructed upon the English model.

*The Justice of the Peace* is one of the most important of the officers established by the reform. One of the chief concrete ends of the reform movement was to do away with the institution of the hereditary magistracy, which existed especially in the eastern provinces of the kingdom and under which the local police was administered by the large landholders. The purpose of the reform was to abolish this, almost the last relic of feudalism, and to put the local police into the hands of officers appointed by the king, — who, at the same time, should not be professional in character but, like the English justices of the peace, should be chosen from society at large, should be obliged to serve, and should receive no salary for the discharge of these public duties. The office was to be honorary. As Dr. Gneist says :

The principal end of the law [*i.e.* the circle law of 1872] was, after the analogy of the English justices of the peace, to attract into the service of the state the well-to-do and intelligent classes. With this end in view the territory was divided into 5658 small divisions, each of which embraced a number of manors and townships with an average population of 1500 inhabitants. In each of these divisions are a justice of the peace and a deputy, who are appointed in the name of the king by the governor of the province from a list drawn up and presented to him by the circle diet. . . . The duties of the justice of the peace consist principally in the administration of the police of his division. It is he who takes police measures against vagrants, administers poor relief, prevents violations of the law ; he interposes in disputes between master and servants ; he watches over the application of the building, health

and game laws and the laws passed to preserve order in hotels and public places, he supervises the maintenance and the police of highways. His orders are sanctioned by short terms of imprisonment, which he can, in necessary cases, order provisional arrest without encroaching upon the ordinary jurisdiction of the criminal courts. He supervises the daily action of the executive officers of the police force and has the right to amend all acts of theirs which in his judgment are inexpedient or incorrect. . . . The justice has under his orders the mayors of the townships and the personnel of the gendarmerie. He himself is not put under the disciplinary power of the landrath but under that of a sort of a *judicium parium* — the circle committee — with a right of appeal from their decision to the courts of justice.<sup>1</sup>

This experiment seems to have proved a success. In the ten years immediately following the introduction of the reform there was only one case of the dismissal of a justice of the peace from office for corrupt administration. Of course the personnel of the justices of the peace must to a large extent be the same as that of the old police system; that is, the large landholders will hold the offices. The great object of the reform as we have seen, was to force this class of persons into the service of the government; the appointee is therefore obliged to assume the duties of the office for at least half of the full term of six years. But there is a great difference between the hereditary and an appointed magistracy, even when the class from which the magistrates are taken remains the same. The power of appointment possessed by the governor enables the government to exclude from the office any person who is notoriously actuated by class motives. Further, the control possessed by the circle committee, which has the right to remove a justice of the peace and which is not composed exclusively of representatives of the landholding classes, must tend to restrain any justice of the peace from yielding too much to class feeling.

The only other officers we need consider are the *Dorfschulzen* or town mayors. It has already been said that most of the political functions of local government and also most important economical functions are attended to by the vincial and circle authorities. The rural communes are

<sup>1</sup> Gneist, in *Königliche Anweisung*, etc. p. 232. See also K. O. §§ 48, 58, 59.

fore little more than organizations for the regulation of the purely prudential matters of an agricultural community, such as common pasturage and tillage, and for the administration of a very few public services, such as the most unimportant roads, the schools and the churches. These matters are attended to by assemblies, sometimes composed, like our town meetings, of all the electors of the communes, sometimes formed of representatives of the electors of the communes.<sup>1</sup> These assemblies have the general power of controlling and regulating prudential matters of purely local interest.<sup>2</sup> The decisions of the assembly are enforced by executive officers, *viz.* the village mayor and two *Schöffen*.<sup>3</sup> During the old feudal days before the reform—the days of what the Germans call “patrimonial government”—these offices, like the police offices, were often hereditary. That is, either the office of mayor was attached to the possession of some piece of landed property, or the lord of the manor had the right to appoint the mayor. Under the new legislation all such customs have been done away with, and the mayors and *schöffen* are now elected by the communal assemblies.<sup>4</sup> Their choice, however, must be approved by the *landrath*;<sup>5</sup> for the mayors, besides being the executive officers of the communes, have the general administration of the police of the state. As police officer, the mayor has the right to order temporary arrest and to impose small fines for the violation of his orders.<sup>6</sup> Service in this office is obligatory and unpaid.<sup>7</sup>

Somewhat similar to the local organization of the commune is that of the manor. The manor exists only in those portions of Prussia which have not as yet been completely freed from the influence of the feudal régime.<sup>8</sup> It is nothing more than a commune which belongs wholly to some one person. In the manor, in addition to the private rights which would ordinarily result from the possession of property, the lord has certain

<sup>1</sup> Loening, p. 165.

<sup>2</sup> *Ibid.* p. 169.

<sup>3</sup> The *landrath*'s veto, however, must be approved by the circle committee. K. O. § 26.

<sup>4</sup> *Ibid.* §§ 29, 30.

<sup>5</sup> *Ibid.* p. 170.

<sup>6</sup> K. O. §§ 22–24.

<sup>7</sup> *Ibid.* §§ 8, 25, 28.

<sup>8</sup> Stengel, p. 234.

rights and duties of a semi-political character. Thus he acts as mayor, but as mayor he is subject to the same control as the ordinary mayor, that is, he is a subordinate officer of the justice of the peace. As the justice of the peace is now subjected to the control of the circle committee, there is no longer the same danger as formerly that these semi-political feudal powers will be abused.

One of the great obstacles to the development of an energetic and efficient local government in the communes and manors is that they are frequently of small size. To obviate this trouble, the reform legislation permits and encourages the union of communes and manors and the transfer of their functions to the new corporation thus formed. The new division formed by such a union must be co-terminous with the division of the justice of the peace (the *Amtsbezirk*). When such a union is established, there is provision made for the formation of an assembly for the division, known as the *Amtsausschuss* or division committee. It should be noted that this body exists in all the divisions; but it never attains the same importance in those divisions to which the duties of the communes and manors have not been transferred, since its functions in such a case are simply to control the police administration of the justice of the peace.<sup>1</sup> In England a similar control is obtained in a different way: in matters of importance two or more justices must act in concert.

Such are the officers in the circle who, while attending to the current administration of the circle as a municipal corporation, at the same time discharge, in the main as subordinates of the provincial authorities, functions affecting the central administration of the state. It now becomes necessary to take up the most important authority of the circle as a municipal corporation, *viz* the circle diet, to which reference has already been made.

*The Circle Diet.* The formation and the functions of this body are of great importance, not only because of its int

<sup>1</sup> K. O. §§ 48, 50, 51, 52, 53.



in the affairs of the circle itself, but also because it elects the members of the provincial diet and because it finally raises all the provincial taxes — for the circle, as we have seen, is really the tax-payer of provincial taxes. Before describing the formation of the circle diet, mention must be made of the fact that the principle of universal manhood suffrage has never taken root in Prussia. This is particularly true of the system of representation in the local legislatures in both the rural and the urban districts. From time immemorial representation has been regarded as a right of property, not of men. The great difficulty has been to assign a fair representation to the different kinds of property existing in the localities. Up to the time of the late reform, as has been so often pointed out, the owners of landed property and especially the owners of large amounts of landed property had been able to gain for themselves a disproportionate share in the management of local matters. This it has been the purpose of the reform to do away with, but no attempt has been made to introduce the principle of manhood suffrage. The reform has recognized as existing in the rural circles three classes of property which must be given representation in the local assemblies. These are the large landed property, the small landed property, *i.e.* the peasants' property, and personal movable property or capital. The way in which these three kinds of property are represented and the amount of representation given to each cannot be made clear without careful examination of the details of the law.

All cities of 25,000 inhabitants, it must be remembered, are excluded from the jurisdiction of the rural circles and form what are termed urban circles. As these urban circles are represented according to their population in the provincial diet, capital has its representation in the provincial legislature independent of the arrangements provided for the circle diets.

In the rural circles, which are composed of the open country and of cities of less than 25,000 inhabitants, the circle diet is elected by the members of the circle who possess the qualifications of local suffrage.<sup>1</sup> Members of the rural circles are, in

<sup>1</sup> K. O. § 7.

the first place, all physical persons who reside within its boundaries;<sup>1</sup> in the second place, all physical persons who, though not residing within its boundaries, own landed property therein or pursue a stationary trade or occupation therein (these are known as the *Forensan*);<sup>2</sup> and in the third place, all juristic persons having their domicile within the circle, including the state, if it has property in the circle.<sup>3</sup> All of these members of the circle are formed into three colleges for the purpose of electing the members of the circle diet;<sup>4</sup> and in each of these colleges the qualifications of the electors and the effect of their votes are different.

The first college is composed of all persons, including juristic persons, who are members of the circle and who pay for their landed property a land and building tax of at least 225 marks (this sum may be raised by the provincial diet to 450 or lowered to 150 marks), or who pay a correspondingly high trade tax for a business carried on in the open country.<sup>5</sup> (This is the middle rate of the highest class in the *Gewerbesteuer*.) Every German citizen who falls within this category, who is *sui juris* and has not been deprived of civil honors by judicial sentence, may cast a vote. Juristic persons, women, minors and incapables may exercise their right of suffrage through representatives.<sup>6</sup> This college, it will be noticed, represents the owners of large landed estates, since land will naturally form the predominant property element in the rural circles. The persons who follow trades and pay a high tax are assimilated to the large landowners simply in order to provide representation for the various industries which do sometimes spring up in the open country.

In the second college the electing body is composed, first, of the representatives of the rural communes who have been chosen by the assemblies of such communes; second, of the owners of manors which are assimilated to communes and which discharge most of the duties attended to by rural communes; and of those persons who pursue a trade in the circle for which they are taxed below the rate which would put them in the first

<sup>1</sup> K. O. § 6.

<sup>2</sup> *Ibid.* § 14.

<sup>3</sup> *Ibid.* § 14.

<sup>4</sup> *Ibid.* § 85.

<sup>5</sup> *Ibid.* § 86.

<sup>6</sup> *Ibid.* §§ 4

lege.<sup>1</sup> The second college, it will be noticed, is intended to represent the smaller owners of land, and also the smaller tradesmen, artisans and manufacturers who otherwise would not be represented at all, since ownership of agricultural land is generally necessary to vote for members of the assemblies of the rural communes.<sup>2</sup> The representation given to the owners of manors is of course an anomaly. It is due to the fact that they are obliged by law to defray out of their own pockets all those expenses of the manors which, were they rural communes, would fall upon the inhabitants. But as the manors are fast disappearing this privilege is not destined to have great importance in the future.<sup>3</sup>

The third college is a common session of the municipal authorities of the cities within the circle.<sup>4</sup> It is therefore composed of the representatives of personal property or capital. This statement perhaps requires some explanation. From the social standpoint all city property, whether consisting of land, houses or what our law terms personal property, is really to be regarded as personal property or capital. The owners treat it as capital, and their interests are those of the capitalistic class rather than those of the agricultural or rural landholding classes.

The members of the circle diet to be elected by these three colleges are apportioned to the rural and city colleges according to population; except that the college of the cities, if there is more than one city in the circle, may not elect more than half of the members of the circle diet, and if there is only one city in the circle, then not more than one-third. The other members of the circle diet — *i.e.* the number left after subtracting from the total number the number of the city college members — are to be elected in equal proportions by the other colleges; *i.e.* the college of the large landholders and that of the small landholders each elect one-half of the remainder.<sup>5</sup> The result of such a system of representation is to assure to all classes their fair share of representation on both the circle and the provincial diets. The capitalistic class can elect from each of the urban

<sup>1</sup> K. O. §§ 87, 98.

<sup>2</sup> Loening, p. 165.

<sup>3</sup> Stengel, p. 236, note 1.

<sup>4</sup> K. O. § 88.

<sup>5</sup> *Ibid.* § 89.

circles two members of the provincial diet, while in the smaller cities it has an influence over the circle diet in direct proportion to the extent of the population. The exclusion of the larger cities from the circle permits them to manage their own affairs free from the control of the landed interest. At the same time the rural landholders are assured of the control of the circle diets, whose action affects them most directly, through the provision that the cities may never elect more than half of the members; and they are fairly sure of representation in the provincial diets, which have an important influence on the welfare both of the cities and of the open country. The processes of election differ considerably in each college and are of so complicated and technical a character as to offer little interest to the foreign student.<sup>1</sup>

The authority organized in this peculiar way has to perform for the circle as a municipal corporation just about the same duties that the provincial diet has to perform for the province. That is, it lays down the general rules which shall be followed by the circle officers in their management of the circle administration; decides what services the circle shall undertake; and levies the taxes necessary to defray the expenses of the circle administration and to pay to the province the quota of money which the provincial diet has decided shall be paid by the circle for the maintenance of provincial institutions and administration.<sup>2</sup> The raising of such moneys, it may be said, is the principal function of the circle diet.<sup>3</sup> In the performance of this duty the circle diet does not have any very wide field of action. One of the things which the circle law was most careful to do was to take away from the circle diets the power to introduce any new taxes, because these might easily derange the system of taxation adopted for the country at large. The law obliged the circle diet to get its revenues by adding percent to the direct state taxes.<sup>4</sup> There are several of these, some land and some upon business and some upon income, tax thus affecting different classes of property or persons.

<sup>1</sup> For a description of them see Stengel, p. 244.

<sup>2</sup> K. O. §3, 115, 116.

<sup>3</sup> *Ibid* §

<sup>4</sup> *Ibid.* §

capital might exist to a greater extent in one circle and landed property in another, it was not felt advisable by the framers of the reform measures to fix any hard and fast rule which the circle diets must follow in fixing the rates at which each different kind of property was to be taxed for circle purposes. But at the same time it was considered unsafe to allow the circle diets perfect freedom in the fixing of such rates, from the fear that in the circles where any particular property interest was predominant the majority would be inclined to tax unfairly the property of the minority. Therefore the law has laid down general principles — or rather, limits within which the circle diets may fix the rates of the particular taxes and beyond which they may not go. For example: the law provides that itinerant trades may be exempted altogether by the circle diets, but that if they are taxed, they must not be taxed higher than lands and buildings; that land and buildings and trades may be taxed at half the rate of the incomes, but no more than incomes; and so on.<sup>1</sup> Under these limitations, taken together with the careful provision for a fair representation of all the different classes of property upon the circle diet, it is felt that the temptation to local tyranny through the exercise of the taxing power is to a large extent removed. As regards the total amount of taxes to be raised by any circle, the law has imposed one limitation in the interest of economical administration. It provides that if a circle diet wishes to impose a tax which is more than fifty per cent of the entire state tax levied in the circle, it must obtain the consent of the proper supervisory authority of the central government (in this case the ministers of Finance and of the Interior at Berlin).<sup>2</sup>

In addition to these powers of taxation, the circle diets have a series of functions to perform, some of which are imposed upon them by law, some of which they may assume voluntarily. The law, in sections 115 and 116, would seem to indicate that the circle diet may establish such institutions as in its judgment will benefit the circle — and which, it must be added, are among the general objects for which the circle organization has been

<sup>1</sup> K. O. § 10.

<sup>2</sup> *Ibid.* § 176.

formed.<sup>1</sup> For instance: it could not establish a new system of courts, since that is not a matter of local concern; but it might establish new institutions of an educational or charitable character, since they would be of particular benefit to the circle and are within the general scope of its competence. In the establishment of such new institutions, however, the diets must not overburden the circles with debts or with heavy taxes. To prevent them from so doing, the law has reserved to the central administrative authorities large powers of control. Debts not especially permitted by law cannot be incurred without the approval of these authorities; nor, as has been noted, can the circle diets impose taxes beyond certain limits.<sup>2</sup>

The question naturally arises: What is the use of two bodies with functions so similar as are those of the provincial diet and the circle diet? Why could not the work of the province as a municipal corporation be transferred to the circle, and the circle diet be allowed to attend to all the duties which are now devolved upon the province? It must, however, be remembered that the chief function of the provinces as municipal corporations is to attend to matters of a less local character than those which fall within the sphere of the circles; the object of their reorganization in their present form was to decentralize the central administration. Previous to the province law of 1875 and the dotation laws of 1873 and 1875 a series of institutions, such as asylums, were supported and administered by the central government, which it was felt could be better attended to nearer home. Therefore the central government gave these duties to the province. It could not well entrust them to the circle because it was felt that the institutions in question were of so important a character to be attended to by so small a district that the resources of the circle, both in administrative staff and in money, would not be sufficient for the adequate performance of these duties. While the province represents the nation in these matters, the circle represents the localities, and as the most important of the purely local municipal corpo-

<sup>1</sup> *U. Z.* i. p. 204.

<sup>2</sup> K. O. § 176.

Before closing what is said in regard to the circle authorities, it must be noticed that most of the important offices in the circle which have been mentioned are honorary and unsalaried, and that the acceptance of all these honorary unsalaried offices is obligatory.<sup>1</sup> That is, refusal to accept office after an election or appointment is attended, where no legal excuse exists,<sup>2</sup> by loss of local suffrage for from three to six years and by an increase of circle taxes of from an eighth to a quarter. This system of coercion for honorary offices, says Dr. Gneist,

is applied without exception in the reform legislation and had before this time been applied in the municipal organization of Prussia. The people have everywhere accustomed themselves quickly to this constraint. At first it was feared that it would be impossible to find competent persons to fill a position entailing such a grave responsibility [as that of justice of the peace]. But in 1875, after the law had been put into operation, more than 5000 justices and as many deputies were found, and it was necessary to fill only 183 places with salaried officers (*commissarische Amtsvorsteher*) who were temporarily appointed for those districts in which it had been impossible to find the proper persons.<sup>3</sup>

The purpose of the application of the principle was to cultivate a greater public spirit and political capacity among the well-to-do rural classes in the same way that such spirit and capacity had, as it was admitted, been cultivated in the municipalities through the same principle of obligatory service as developed in the municipal corporations act of 1808.

### III. *The Cities.*

In order to give a complete outline of the local government of Prussia it remains only to speak very briefly of the municipal organization. It will be remembered that the first steps in the great reform movement of this century were made by Stein in his municipal corporations act of 1808, which served as the model for both the circle and the province laws passed so many

<sup>1</sup> K. O. § 8.

<sup>2</sup> Among the legal excuses are chronic sickness, the following of a business which necessitates frequent or continuous absence from home, the age of sixty years, service as honorary officer within the last three years.

<sup>3</sup> *Révue générale*, etc. p. 253.

years afterwards Stein was able to begin the great work with the cities because, as a result of the centralization of the eighteenth century, the social conditions of the municipal population had been made less unequal. The strong government of Frederick William I had largely freed the poorer classes from economic dependence upon the richer. Though the spirit which was breathed into the new organization was quite different from that which animated the old municipal system, the actual form of municipal government established by the new law was in no respect very different from that which existed before Stein began his work. The changes which he made consisted mainly in the widening of the suffrage for the town council, which still remained the important organ of the municipal government; in the new obligation which was imposed upon the citizens of the municipality to take upon themselves public duties; and in the greater degree of freedom which was allowed the cities in the management of their own affairs. Since the time of Stein some modifications have been made in his plan — modifications which cannot on the whole be called improvements. They were due mainly to the desire of the Conservative party — which, with the exception of very short periods, as during 1848-50, has until recently been in complete power — to curtail the political influence of the municipal population. These modifications have consisted mainly in the strengthening of the central control and in the limitation of the freedom of action of the cities in the management of their own affairs. In detail, the present municipal organization is as follows:

Just as in the open country, it is recognized that there is a sphere of municipal action in which the municipality should have considerable autonomy, and that there are certain functions of administration attended to within the municipal district which interest the country as a whole and over which the central administration should have a greater control. Just as in the circle, again, it is believed to be better not to make a complete separation in the authorities which are to attend to two different classes of duties, but to charge the executive authorities of the city with the performance of those du



which are of central concern. It is provided, however, that in the larger cities the central government may, if it sees fit, put into the hands of distinctively central organs the management of police matters; and this it has done in many cases.<sup>1</sup> In the smaller cities, on the other hand, the town executive attends to these matters as well as to all other matters which affect the country as a whole. In these cases it is regarded as an agent of the central administration and acts under the control of the central administrative authorities, generally the governments and the government presidents.<sup>2</sup> In case the city is at the same time an urban circle, — which it will be remembered is the case in all cities having over 25,000 inhabitants, — the city executive in like manner attends to all the duties which in the rural circles are attended to by the landrath. In these urban circles there is also a lay body, similar to the circle committee, called the town or city committee,<sup>3</sup> which however attends only to matters of central concern. As this city committee consists of the burgomaster of the city and of members chosen either from the town executive board or, where there is no such board, from the town council,<sup>4</sup> the result is that in all cases it is the city officers who attend to the central administration in the city — with the exception (already noted) of the police administration in the larger cities.

But while city officers are thus generally called upon to attend to the business of the central administration in the city, the most important functions of the municipal administration are those of a distinctively local character. The general control of this local administration is vested in the town council, which is chosen by the taxpayers of the city.<sup>5</sup> The method of election is peculiar: it is well adapted to keep the control of the city affairs in the hands of the wealthy classes, since the influence of a man's vote depends largely upon the amount of taxes he pays. The system is as follows: The total amount of the direct taxes paid in the city is divided into three parts. Those persons

<sup>1</sup> Law, March 11, 1850, § 2.

<sup>2</sup> Städte-Ordnung, May 30, 1853, § 56.

<sup>3</sup> K. O. § 170.

<sup>4</sup> A. L. V. G. §§ 37, 38.

<sup>5</sup> S. O. 1853, § 35.

paying the highest taxes, and who pay one-third of the entire amount, have the right to elect one-third of the members of the town council. Those persons who pay the next highest taxes, and who pay another third of the entire amount, elect another third of the members of the council. All the remaining taxpayers elect the remaining third.<sup>1</sup> An example taken from the city of Bonn, which has a population of about 36,000 inhabitants, will show how thoroughly this method of representation throws the control of the city into the hands of the wealthy classes. Out of a total number of 3240 electors, 162 electors elected one-third of the town council; 633 electors elected two-thirds; and the remaining third was elected by 2607 electors. The disproportion between the classes was really much greater than the above vote indicates; for while sixty-four per cent of the electors of the first class voted, and sixty-six per cent of the second class, only twenty-two per cent of the third class availed themselves of their electoral privilege. The explanation is said to be this: the vote not being secret, intimidation had been practised to such an extent that the voters of the third class preferred to stay away from the polls rather than vote for candidates who were not of their choice.<sup>2</sup>

The authority thus formed has the absolute control of the entire city administration. The law simply says that it shall govern by its decision the affairs of the city.<sup>3</sup> In addition to deciding what branches of administration the municipality shall attend to, it also elects all of the executive officers of the municipality. The execution of the resolutions of the town council is entrusted either to a burgomaster who has complete control of the administration in its details, or to an executive board whose members are elected by the town council. In such an executive board, a part of the members are professional in character (as, for example, the school commissioner, the corporation counsel, the town surveyor or commissioner of public

<sup>1</sup> S. O. 1853, § 13.

<sup>2</sup> Leclerc, *La vie municipale en Prusse*, Extrait des *Annales de l'Ecole libre des sciences politiques*, 1853.

<sup>3</sup> For example, see *Städte-Ordnung der Provinz Westphalen*, March 19, 1856, §

works), and a part are purely lay officers, *i.e.* ordinary citizens who are obliged to assume office if elected and to serve at least half the regular term of six years.<sup>1</sup> (The same obligation to serve is imposed upon those persons who are elected to be members of the town council.<sup>2</sup>) In case the executive authority of the city is vested in such a board, the burgomaster is simply the presiding officer and has powers little greater than those possessed by the other members of the board. But the moral influence which he exercises is nevertheless so great as very largely to determine the character of the city administration.<sup>3</sup> He is a professional officer and receives a large salary. In filling the position of burgomaster—or, in fact, that of any of the professional officers of the executive board—the method pursued is one that would probably strike the American politician as peculiar. A city which needs a burgomaster, a commissioner of public works or any such officer, advertises in the papers for the particular officer needed, stating the qualifications which are required. The council then selects from among the applicants the one who seems best fitted for the place. A large city often chooses a burgomaster who has made his reputation as a good executive officer in a smaller city.<sup>4</sup> As the term of office is at least for twelve years and may be for life, the positions are much sought after, and the applicants are generally well educated men who have had experience in city administration.<sup>5</sup> The election of these professional officers generally requires the approval of the central administration before it is of force.<sup>6</sup> This is considered to be necessary on account of the many duties affecting the country at large which are devolved upon the town executive. While the town executive has, in the main, to carry out the resolutions of the town council, it has at the same time to exercise quite a control over the actions of this body,—both to keep them within the law and to prevent the town council from taking unwise action. In case of conflict between the town executive and the town council the matter is

<sup>1</sup> For example, see Städte-Ordnung der Provinz Westphalen, March 19, 1856, § 35.

<sup>2</sup> Z. G. § 10.

<sup>4</sup> Leclerc, p. 20.

<sup>6</sup> S. O. 1853, § 33, Z. G. § 13.

<sup>3</sup> S. O. 1853, §§ 57, 58.

<sup>5</sup> *Ibid.* p. 17.

decided by the proper supervisory authority, in this case the district committee.<sup>1</sup> As this is a lay authority, the professional officers of the central administration cannot now interfere in the municipal administration. A further control exercised by the central government over the municipal administration is found in the requirement of the approval of the district committee for certain resolutions of the town council before they are regarded as valid. Among the acts subjected to such control are the more important measures of the financial administration, such as the making of loans and the imposition of high taxes.<sup>2</sup> The rules are much the same as those already mentioned with regard to the communal administration of the circle and province. In fact, the control over the circle and the province was modelled on that already formed for the municipalities by the municipal corporations act of Stein as amended by later laws.

A word must be said in regard to the organization of the city departments which attend to the detailed current administration. The municipal corporations act of 1853 provides that for these matters there may be formed permanent commissions or boards, composed either of members of the town council or of members of the town executive board or of these and other municipal citizens, which boards or commissions are the subordinates of the town executive and have under their direction the salaried members of that body.<sup>3</sup> The purpose of the provision is to call into the service of the city as many of the citizens as possible. Service on such boards is obligatory, as is the case with all unsalaried positions in the city government. Finally, the same law provides that the larger cities may be sub-divided into wards, over which are to be placed ward overseers to be elected from among the citizens by the town council.<sup>4</sup> These ward overseers are the subordinates of the town executive board for all matters of municipal administration. This institution has been very generally adopted in the larger cities, where it has had excellent results. The ward overseers serve as a means of communication between the different

<sup>1</sup> S. O. 1853, § 36, / G. § 17, 1.

<sup>2</sup> *Ibid.* § 53, / G. § 16, Abs. 3.

<sup>3</sup> *Ibid.* § 59.

<sup>4</sup> *Ibid.* § 60.

tricts and the executive board. If anything goes wrong in the district, there is always some one to whom complaint may be made with the assurance that the complaint will be attended to. An example of the workings of such an institution may again be taken from the city of Bonn. This city is divided into ten wards. In each of these is an overseer who, in the administration of public charity, has under his direction ward commissions of citizens, whose duty is, under his direction, to examine into all cases of demands for poor relief. So many persons are called into the municipal service of public charity that each one of them has no more than two or three families to attend to and thus knows perfectly the condition of those asking for relief.<sup>1</sup> This method of administering poor relief is simply the adoption in the public administrative system of the method which has been so successfully applied in this country by private associations, such as the charity organization societies and the bureaus of charity.

Such is the general organization of the Prussian city. It differs so radically from ours in the fundamental matter of representation that any comparison of the two systems would be useless. By those who believe in property qualifications for municipal suffrage, any excellence in its results would naturally be attributed to the control of the administration by the property-owning classes — a control which forms a marked characteristic of the Prussian system. One thing, however, may be dwelt upon; and that is the care that has been taken by the municipal law to force the well-to-do classes into the service of the city by making it absolutely obligatory upon a man who has received appointment or who has been elected to any of the honorary offices in the gift of his fellow electors, to assume the office. The penalty is loss of suffrage and increase of taxes. How much such a principle has affected the character of the municipal administration it is of course almost impossible to say; but the Germans at any rate attribute so much to it that they have made this principle a fundamental one in the reorganization of the local government in the open country. Again, it

<sup>1</sup> Cf. Leclerc, p. 57.

must be noted of the municipal administration as well as of the whole Prussian system of local government that the interference of the central legislature of the state in local affairs is infinitesimal if it exists at all. Enough of the feudal idea has remained in Prussia to permit the development of the principle that there is a sphere of administrative action which must be left almost entirely to the localities; that within this sphere the legislature must not interfere at all; that any central interference that may be required should come from the administration, and in the main from the lay authorities of the administration, and should be confined simply to the prevention of the incurring of too great financial burdens by the localities. Therefore the law simply says that the local affairs of the particular districts shall be governed by the decisions of the local authorities, and that in those cases only in which the law has expressly given it the power may the central government step in to protect the localities from their own unwise action. The system is one of general grants of local power with the necessity in certain cases of central administrative — not legislative — approval. The benefit of such a system cannot be over-estimated. Through its adoption all the evils of local and special legislation are avoided. In place of the irresponsible legislative control, which has shown itself in this country so incapable of preventing the extravagance of the localities, is to be found a control exercised by responsible authorities — authorities which have a certain permanence and are well able to judge whether a given action will be really hurtful to a community or not. At the same time the greater freedom from central interference guaranteed to the localities is calculated to increase the growth of local pride and responsibility.

Such is the Prussian system of local government; in its present form the most recent of all existing systems. It has been worked out during three-quarters of a century, but still it adheres to the plan originally sketched by the great statesman. The only change that has been made to give to the system a more direct service of the well-to-do classes at

cultivate in all classes of the community a public spirit and a loyal feeling which shall ensure to the social organism a more vigorous life. Socialistic, in the highest sense of the word, as it is in spirit, it is individualistic in its application. The life of the social organism is to be made more vigorous through the better development of its members and their more harmonious correlation. Compulsory honorary public service is made the lever wherewith to raise the individual above mere egoistic aims; to cause him to keep always before his mind that he is simply a part of a great whole and that it is only through the development of that whole that the environment of the part can be bettered. Of course no administrative system, however perfect, can alone bring about such a result. In changing the thoughts and habits of men in society, the admonitions of religious teaching and the influences of a lofty humanitarian philosophy must play a far greater part. But Prussia deserves the credit of recognizing that the administrative system is one of the factors to be taken into consideration in the solution of this great problem—the conquest of human selfishness in the form of class tyranny. This problem has of late years forced itself so continually upon the consideration of Prussian statesmen that it is no wonder that one of the chief aims of the late reform has been to solve it.

The concrete method adopted in Prussia has the advantage of not being worked out *à la doctrinaire*. The whole history of Prussia has contributed to the present form of government. Foreign institutions have indeed been copied, but they have been copied judiciously. The pilots of the reform have been able to clear the rocks of English particularism without being forced upon the shoals of French uniformity. The English principle of obligatory honorary public service has been combined with the French belief in the necessity of the coexistence of local representation with local taxation. But in its main features the system is essentially German. Its faults are due to an excessive recognition of the importance of historical associations, combined in one or two instances with undue concession to class feeling. The result is a too great complexity

of relations and multiplicity of parts. But it is to be hoped that gradual reform will do away with these defects, and that with a greater simplification of the machinery of government will come a smoothness and efficiency of action without which no system of local government, however elevated be its aims and whatever be the political sagacity which has contributed to its formation, can be set down as perfect.

FRANK J. GOODNOW.



## REVIEWS.

*An Honest Dollar.* By E. BENJAMIN ANDREWS, President of Brown University. Published by the American Economic Association, November, 1889. — 50 pp.

The question dealt with in this monograph is a most perplexing one. "An honest dollar," in the view of its author, is one in using which it is possible for men to be fair in their commercial dealings. Manifestly, when the power of exchange in the monetary unit is subject to violent fluctuations, either the debtor will gain at the loss of the creditor or the creditor will gain at the loss of the debtor, and if honesty be to pay a debt with money equal in value to that in which the debt was created, a fluctuating unit renders honesty impossible.

The part of this essay which invites critical study pertains to the plan suggested for holding prices to the new base line which they seem to have settled upon. Turning his back upon the past, the author asks what can be done to ensure stable prices for the future. The following is his statement of the case :

The bulk of this nation's and of the world's outstanding indebtedness, private and public together, must, by 1889, have ceased to be on the basis of the high prices antecedent to 1873, and would be much more equitably adjusted according to the low prices now ruling. The fall of prices since 1873 has been a terrible calamity, but it has occurred in spite of us, and here we are. The evil, as a whole, a general rise of prices would not correct, but only repeat. We have struck a new base line of prices ; let us plant ourselves upon it, and see to it that we are not forced to change again, whether up or down.

All must accede to this statement of the problem, and all who appreciate the evils of fluctuation in prices must be interested in any plan promising its solution. The solution offered in the monograph under review may be best presented in the words of the author. He says :

I am impressed with the practicability of preserving prices permanently at whatever level they have at any time assumed, by swelling or contracting the volume of money in circulation, on some such plan as has been outlined by Professor Walras, of Lausanne. The method would involve (1) the critical, official ascertainment of the course of prices ; (2) the use of some form of subsidiary full legal tender money ; and (3) the injection of a portion of this into circulation or the withdrawal of a portion therefrom, according as prices had fallen or risen.

For a satisfactory analysis of this scheme, it will be necessary to go one step further and notice the machinery upon which reliance is placed for increasing and decreasing at will the money in circulation. And indeed it is proper that this machinery should be exhibited, since President Andrews claims that in this he has contributed to the advance of monetary science. He says:

It [the government] could, manifestly, accomplish the increase by the purchase of silver and the coming of it into tokens, securing its funds for the purchase as for other outlays. The tokens would take the form of certificates and find vent in ordinary government expenditure. But how reverse these certificates should there come a rise in prices? The simplest way would be by selling call bonds redeemable in silver certificates, after which the replenishing process could at any time be set in play by simply calling more or fewer of those bonds.

We have now before us the theory on which this plan to regulate prices rests, and the machinery by which it is to be carried out. Will it probably work? The first step, that is, the "critical, official ascertainment of the course of prices," is doubtless feasible; and it certainly lies within the ability of government to purchase bullion and coin it into tokens, or issue upon it certificates of deposit. The question forced upon the critic is, whether or not it is possible to "inject" money into circulation, or to "withdraw" it from circulation, in such a manner as to regulate prices.

The true answer to this question appears to me to depend on the sort of money making up the circulation. If asked by one who holds in mind inconvertible paper money, or, as it is called, "fiat" money, it is doubtless true that prices tend to fluctuate with the number of monetary units; but if asked by one who holds in mind a monetary system based on gold and silver, it is equally sure that the same result would not follow. There is involved in this question one of the most elusive points in monetary science; namely, what is to be included, and what excluded, in determining that thing known as "quantity of money," to which prices are adjusted. Our author defines "quantity of money" as coined money, or deposits of bullion on which certificates are issued. He does not say this, but the logic of his plan demands such a definition,—otherwise how can he expect to anchor prices to "a new base line" by giving the government the right to increase or decrease the amount of coined money?

Such a definition of "quantity of money," however, appears to me to be incorrect, for he who holds it is forced to deny that gold and coined have any influence on prices, a position that no economist would care to maintain when brought clearly to his attention. It is true that gold and silver bullion are already included in the

amount of exchange medium to which prices are adjusted, how can the purchase of any portion of it by the government, and its coinage into tokens, raise the base line of prices? This question brings before us the fundamental error in the theory on which President Andrews bases his scheme. The number of monetary units afloat do not, as it assumes, determine prices; but prices, being adjusted to the amount of money material known to be available for use, determine the number of monetary units which, according to prevailing commercial custom, are demanded by trade. It is of course true that the denominations in which coins or certificates of deposit are issued decide in large measure whether they are used in retail or in wholesale trade, and therefore that the coining of bullion into small pieces might exert a perturbing influence on retail prices; but this is manifestly so far from what the author is aiming at that we are not justified in belittling his scheme by its suggestion.

The above criticism was framed to meet the formal statement of the scheme under review, and if left to stand without comment might itself be open to censure. My criticism accepts both gold and silver as money material. Were this correct, prices would be adjusted to the total amount of gold and silver in existence exclusive only of that portion used in the arts, a conclusion which seems to be contradicted by the fact that prices have continuously fallen notwithstanding a very liberal annual output of silver. The truth is, however, that silver is not at the present time money material; its use is confined to subsidiary or restricted coinage; prices are not graded to its commodity value, but to the commodity value of gold; and consequently any increase or decrease in its amount can have at most but a prospective influence on the base line of prices. Had we time to follow out the thought thus opened, it would lead to a conclusion of much importance, for it would show that every scheme which proposes to solve the money problem, and to arrest falling prices, by extending the use of a dishonored metal as money, must result in failure. And this applies not alone to the plan under review, but to a scheme like that of Secretary Windom's as well; indeed, it applies to the whole category of arguments by which Congress has of late been induced to force silver or silver certificates into circulation. The truth is, that so long as we hold to a metallic currency, the base line of prices cannot be affected except by a change in the quantity of price-making metal; that is to say, of the metal out of which standard coins are manufactured. No issue of "subsidiary" money can affect prices unless it proceed so far as to cause it to usurp the place of standard coin.

My review of this monograph is wholly inadequate to the importance of the question under discussion. It is unfortunate that limitation of

pace forbids my calling attention to its many merits. This, however, of comparatively slight moment, for the readers of the *POLITICAL SCIENCE QUARTERLY* may be relied upon to study with appreciative discernment whatever President Andrews may write. HENRY C. ADAMS.

1 *Treatise on the Law relating to Rates and Traffic on Railways and Canals, with special reference to the Railway and Canal Traffic Act, 1888, and the Practice of the Railway and Canal Commission.* By A. KAYE BUTTERWORTH, LL.B., assisted by CHARLES E. ELLIS, B.A. London, Butterworths, 1889. — 8vo, xxx, 264, 165 pp.

*The Railway and Canal Traffic Act, 1888.* By W. A. HUNTER, LL.D., M.P. Part I: *An Exposition of Section 24 of the Act.* London, Sweet and Maxwell, 1889. — 8vo, xv, 212 pp.

*The Working and Management of an English Railway.* By GEORGE FINDLAY. Second edition, revised and enlarged. London, Whittaker and Co., 1889. — 8vo, vi, 300 pp.

*The Railways of England.* By W. M. ACWORTH. Second edition. London, John Murray, 1889. — 8vo, xvi, 427 pp.

*The Public Regulation of Railways.* By W. D. DABNEY. New York, Putnams, 1889. — 8vo, v, 281 pp.

*Monopolies and the People.* By CHARLES WHITING BAKER, C.E. New York, Putnams, 1889. — 8vo, xv, 263 pp.

*Railway Secrecy and Trusts.* By JOHN M. BONHAM. New York, Putnams, 1890. — 8vo, 138 pp.

The act of 1888 marks an important step in the history of English railway policy. The law of 1873 which created the Railway Commission had proved so unsatisfactory that the select committee of 1881 was deluged with complaints, mainly as to classification and local discrimination. Repeated attempts were made by the government to enact a new law designed to meet these difficulties, but the bills introduced year after year were always defeated by the opposition of the companies. The passage of the act of 1888 marks a signal triumph for the force of public opinion, to which the English railways have hitherto been singularly little amenable.

Among the numerous treatises that have sprung up as commentaries on the new law, the two here mentioned are the most significant. Butterworth's *Treatise on the Law relating to Rates and Traffic* is more than it purports to be; for it contains not only the law, but in most cases, an interesting historical survey and economic discussion of the principle involved in each particular point. The introductory chapter is devoted

to a concise but clear sketch of canal and railway legislation from the middle of the last century. In the matter of rates Mr. Butterworth divides the history of legislation into three periods: the *tolls* stage (1800–1840) when the only statutory limitation was that placed on tolls; the *rates* stage (1840–1888) when charges for conveyance were also limited; and the *terminals* stage (since 1888) when terminal charges as well as mileage rates and tolls are fixed. The author feels his way carefully through the labyrinth of decisions, and succeeds in drawing a vivid picture of the legislative policy. He gives a similar history and criticism of the subjects of through rates, equality and preference, publication and disintegration of rates. The jurisdiction and procedure of the new Railway and Canal Commission are compared with those of its predecessor, and a chapter is added on the subject of canals. By no means the least valuable part of the book are the appendices given in the second edition (published in the same year). These contain a reprint of all the general railway acts since the law of 1845; valuable specimens of clauses in the earliest and latest special acts; and finally the recent rules and orders of the Board of Trade and of the Railway and Canal Commission. Mr. Butterworth's book will be of especial value to the economist as well as to the lawyer, for it contains the first clear and comprehensive sketch in English of the history and actual state of British legislation on the subject.

Less satisfactory is Hunter's *The Railway and Canal Traffic Act*, 1888. The work is in two volumes of which the first is devoted to the famous section 24, *i.e.* the submission to the Board of Trade of the classification and revision of maximum charges. The second volume, to appear shortly, is to deal with the remainder of the act. Mr. Hunter also gives an historical survey of the matters of classification and maximum rates. He makes more use of the blue books than does Mr. Butterworth, but is unable to arrange his conclusions systematically. The most significant point is the frequent introduction of references to American conditions. The decisions and reports of our Interstate Commerce Commission are repeatedly quoted *in extenso*. Mr. Hunter will be remembered by students as the chief advocate of the cost-of-service theory in the select-committee testimony of 1882. A change seems to have been effected in his views by the decisions of the American commission—for he approvingly cites some of their recent admirable statements which cannot possibly be reconciled with his cost-of-service theory. It may be doubted incidentally whether it is quite correct to describe the American system as "competition tempered by state regulation," and the British system as "state regulation tempered by competition." These glittering generalities are not always exact. More than one-half of the book is devoted to a detailed presentation of the classi-

fication and maximum tolls on each of the twenty-five principal lines in Great Britain. This will be welcome material to special students. Mr. Hunter does not seem to have over much confidence in the important section of the new act which gives to the Board of Trade the general superintendence over classification and maximum rates. "The traders," he thinks, "may find out that they will lose much and gain little by the symmetry and uniformity which are to take the place of the chaos of the old special acts." But he does not explain his suspicions.

Findlay's *The Working and Management of an English Railway* deals, as the title implies, primarily with technical and administrative questions, which must be passed over here, however interesting they may be. Mr. Findlay is general manager of the London and North-western line, and the book is accordingly devoted mainly to a description of this road. In the chapter devoted to the law, and to the relations of the state to the railways, the author simply holds a brief for the railways, as is natural in the manager of England's greatest line. He fulminates against state purchase, and looks with a hostile eye on governmental regulation. In the matter of rates he does not attempt to go into the theory, as did Mr. Grierson a few years ago. The most valuable part of the book for American readers is the description of the clearing house and the account of the pools, known as the traffic-rates conferences and percentage divisions of traffic. Those who believe that pooling is unknown in England will do well to read this interesting chapter.

Acworth's *The Railways of England* deals almost entirely with the prodigious changes made in actual railway management from the standpoint of traffic facilities. The purely economic problems in the narrower sense are therefore not touched upon. But the work can be recommended for the vivid picture it gives of recent British achievements in transportation, as compared with those of other countries. The only objection is, as the author himself confesses, that the language used is one of almost absolute panegyric.

On the other hand the recent American works take up a different class of subjects, and reflect the light of our recent experience. In *The Public Regulation of Railways* Mr. Dabney has given us an excellent popular account of pending railway problems. In his former capacity as chairman of the Virginia committee on railways and internal navigation he had ample opportunity to study both sides of the question; and the result is a valuable presentation of the law and the principles that should shape the law. The chapters on the economic aspects of the question in particular are in accord with the latest most approved theories. On the whole Mr. Dabney favors the value-price theory, although not in so one-sided a manner as some apolo-

for railway abuses. Classification and discrimination are considered in detail, with the conclusion that pools, carefully regulated by public supervision, afford the best prospect of solving many of our troubles. The recent action of both state and national commissions is reviewed, and it is shown that the interstate commerce law must tend to promote combination. Altogether the book can be heartily recommended, and it will no doubt serve to popularize some rather unpopular views.

The two recent works, Baker's *Monopolies and the People* and Bonham's *Railway Secrecy and Trusts*, deal with much the same class of questions. Many of their conclusions are harmonious. Baker treats not only of railway combinations, but of industrial trusts, monopolies of municipal service and labor unions. He subjects the laws of competition to a lengthy, if not very profound, analysis and concludes that combination is a necessary tendency of modern society. His inference therefore is that it will be useless to attempt to prohibit these various forms of combination; that the only practicable method is to regulate and not to forbid. His practical recommendation in the case of railways is public ownership but private management. The national government should buy out the railways, but should hand them over to certain corporations to be conducted under careful regulations. Had Mr. Baker studied the experience of Italy, Holland and other countries, he would have been led to temper many of his enthusiastic utterances as to the future of such a system. In the case of trusts he confesses the difficulties in the way of public ownership, and contents himself with public regulation. Mr. Bonham, on the other hand, seeks to divide trusts into two classes, according as they have secret agreements with the transportation companies or not. The first class is dangerous, the second class is harmless because it cannot create any lasting monopoly. Such a distinction is of course entirely arbitrary, but it forms the keynote of the monograph. Mr. Bonham, while deprecating any legislative prohibition of pools and trusts as leading to worse and more secret methods, nevertheless opposes the methods of railway pooling and combination as a solution of the problem. He finds that the trouble lies in the secrecy with which the railways are managed. His remedy is absolute publicity. But he confines himself to vague generalizations, and is unduly diffident in setting forth any practical plan.

While neither of these monographs is a very profound exposition of the subject, they are both to be welcomed as showing the gradual spread of sounder ideas among the public. The popular outcry for prohibition of combinations on the one hand, and the very one-sided arguments of railway advocates and unconditional admirers of trusts on the other, have tended to obscure the whole subject. It is refreshing to notice the appearance of saner and more moderate views, even if the argu-

ments be not very penetrating, or the suggested remedies thoroughly satisfactory. It is a great step to have attained the golden mean.

EDWIN R. A. SELIGMAN.

*Grundlegung der theoretischen Staatswirthschaft.* Von Dr. EMIL SAX. Vienna, 1887.

Professor Sax has become well known to the economic world through a series of contributions to the theoretical aspects of economic science. The present book may be considered as a continuation of his work published in 1884 *Wesen und Aufgabe der Nationalökonomie*. In this work he attempts to find an economic basis for what the Germans call *Finanzwissenschaft*. In the author's opinion the science of finance has not up to the present been correlated to political economy. Its so-called principles, so far as they are anything more than convenient rules of thumb, do not rest on an economic basis at all. All the leading writers on the subject have at some point in their expositions abandoned the attempt to find an economic explanation for the facts of taxation, and have had recourse to moral principles or principles of ordinary political expediency. To base taxation upon duty to the state, and to call for taxation according to ability, is at bottom an attempt to explain an economic phenomenon by ethical categories, and rests, moreover, upon a very confused notion of justice. Such a theory is of importance as against the old idea of proportional taxation, but contributes after all but little toward an economic explanation of the phenomena.

The author divides the subject into the following leading topics: 1. The theory of the public economy as a part of theoretical political economy; 2. The various theories as to the economic nature of state activity; 3. The elements of human economy; 4. The general economic categories in the public economy; 5. The collectivistic functions; 6. The groups of collectivistic processes producing value—from which he deduces his "financial principles" or what we might call his "canons of finance."

It will be seen that the author takes a very comprehensive view of the subject, so that what Adam Smith disposed of in a sentence has here grown into a volume of nearly six hundred pages. In his third division he gives a list of the general economic categories and then tries to show how they all reappear in essentially the same form in the life of the state. State activity is not for him something apart from the life of the individual; private activity and public activity are both parts of the same process, beginning with, ending in, and having for its purpose the satisfaction of the wants of man. On its economic side the state is not an external agency which may determine arbitrarily



shall take from the proceeds of individual effort and what return it shall make for the goods it has taken, but simply one of the many forms of collective organization of which man must make use in his struggle to obtain the highest possible return for the least possible effort.

Everything turns about the conception of value. The author accepts with little modification the so-called Austrian theory of value, as set forth by Menger, Wieser, and Böhm-Bawerk. Public contributions, *i.e.* taxes, are only one form of value — collectivistic value.

The state occupies exactly the same relation to its subjects on its economic side as a private individual who happens to have a practical monopoly bears to the people who purchase his commodities. The state may fix the price from other considerations than those which affect the private monopolist who also fixes his prices at his own discretion; the essence of the process, however, is exactly the same. Here we have a kind of value in the public economy which is perfectly familiar to us in the process of private economy; and it is only necessary, therefore, to examine what modifications of the same follow necessarily from the collectivistic point of view. [Page 298.]

The form of value as it appears in the public economy is assimilated directly to the forms of value appearing in the giving of commodities for services — as in paying doctors' or lawyers' bills, which seldom are the same for poor persons as for rich. In all cases, however, — whether in the isolated private economy (for example, Robinson Crusoe), or in the exchange of commodities between two private economies, or in the exchange of commodities for service or *vice versa*, or in the payment of fees and taxes, — the phenomenon of value lies at the basis and is the same in essence in each case, however much its form may change (page 297); and it is this phenomenon, this fundamental category, which, reappearing everywhere in the individual and collectivistic life of a community, enables us to develop a theory of political economy that will also include a theory of taxation.

In Section II the author takes up one after another the various theories of taxation which have been advanced, and seeks to show how they all fail in finding an economic basis for taxation. Smith, Senior, Bastiat, Say, Ricardo, List, Dietzel, Wagner and Stein receive his attention in turn, and it must be said that on the whole he makes out his case against them. I think we must grant him that up to the present the so-called science of finance is in an extremely unsatisfactory state. Our knowledge of financial systems has been largely advanced, but the science is not much better off as to its fundamental principles (on its economic side, at least) than it was fifty years ago. Wagner, who has done much to advance the subject in various ways, refers in his discussions almost as much to ethical as to economic considerations and really bases his system almost entirely on the former.

Every person has individual wants and collectivistic wants; *i.e.* he has wants which come to him as a human being simply and would persist if he were an isolated individual, and he has wants which grow out of his association with others. None of the latter can be satisfied without some kind of organization; and in this system he must give something to others as well as receive from them. Many of them can be satisfied only through the highest type of organization, the state; and to the state also he must give something in order to secure this satisfaction. Individual and collectivistic wants must be co-ordinated within each private economy with relation to its stock of goods.

The final utility of every satisfaction for particular wants will vary with every economy; so that the value of a state service will be very different to different people, varying notably with the stock of goods in their possession. The state may, therefore, for a given service take very different sums from different private economies, because the final utility of the service varies with the amount of goods.

This theory justifies, therefore, not merely so-called proportional taxation but also progressive taxation, and gives an economic basis for it. The author analyzes the phenomena and comes to the conclusion that no person should contribute to the satisfaction of the collective wants, *i.e.* pay taxes, until his goods exceed the absolute minimum necessary to physical existence. From that point on he can give an increasing proportion of his goods, up to a certain point where the final utility of further state services begins to grow smaller. When this latter point is reached, there is no further *economic* basis for a further increase of the rate. From a similar analysis he deduces the propriety of taxing at different rates individuals of the same property but with unequal claims upon them. "The problem of taxation is to take from the private economies for collective wants quantities of goods which shall be so measured that every person, according to the actual condition of the individual values within his possession, shall estimate the goods taken from him as high as others do the goods taken from them" (page 514).

The author then takes up some of the more special questions. He thinks that taxation is only reasonable as a system of different kinds of taxes (page 541). This follows directly from his theory. It is a justification, therefore, to a certain extent of the existing methods of taxation. The single-tax theory is not only unsatisfactory from a practical point of view but is a violation of fundamental economic doctrines. The only method of securing fairly perfect taxation lies in developing a complicated system of many different kinds of taxes, so arranged that one will supplement the other. Complication, not simplicity, is the characteristic of a good system of taxes. A few paragraphs are added to the distinction between direct and indirect, special and general

*etc.* In his treatment of these subjects the author does not differ very widely from Schäffle.

Professor Sax's work pretends to be nothing else than a theoretical investigation. As such, it must be admitted, I think, that he has made a substantial contribution to the subject. He emphasizes an aspect of the topic which must attract more and more attention until a satisfactory solution of its problems shall be found; and he is the first to give us a purely economic basis of taxation and a purely economic rule for the distribution of taxation. Not "equality of sacrifice" but "equality of values taken" must underlie all reasonable systems of taxation.

EDMUND J. JAMES.

*Grundlagen der Volkswirtschaftslehre.* Von FRIEDRICH JULIUS NEUMANN. Tübingen, H. Laupp, 1889.

In opening this book the reader will be struck by the contrast between dedication and preface. The dedication is to Roscher, and indicates that the author was trained in Roscher's methods; but in the first sentence of the preface the deductive bent of Professor Neumann's mind is clearly revealed. There is, however, great strength in this union of opposing points of view; and from thinkers like Professor Neumann, who are deductive by instinct but historical by education, there is a good prospect that the differences between the old and new political economy will be finally set aside.

When, however, I examine the contents of this book, and seek to estimate the success of Professor Neumann's efforts, I find myself at a serious disadvantage. After the usual German custom, the book is given to the public in parts, and only one of the three proposed parts is yet in print. This part is mainly devoted to definitions and to the fundamental concepts of the science. The second part will treat of the objects of political economy, the nature of its laws and the theory of value and price. The third part will develop the laws of production and the shares in distribution. Here is an attractive programme, and one of especial present interest, because many of the doctrines which Professor Neumann proposes to emphasize have not been adequately treated by the historical school of economists. In the theory of distribution and value most of the historical school seem to be Ricardians at heart. If Professor Neumann can develop a broader point of view — one more in harmony with the conception of economic science which German thinkers have long striven to realize — he will do a signal service.

It is, as I have said, difficult to judge of the part now at hand, because the utility of economic definitions depends upon the use made of them

in the discussion of economic doctrine. Definitions and concepts must be judged solely by the light they throw upon the phenomena they are meant to explain. From this point of view I cannot wholly agree with the method used by Professor Neumann. He decides the meaning of terms rather by the weight of authority than by their capacity to express clearly new ideas of vital importance to the progress of economic theory. His method seems to be due to the influence of his historical education; yet if there is any field where purely deductive methods are in place, it is in dealing with concepts and definitions. When practical policies are under consideration, the only hope of a solution rests in a conciliation of opposing views. But a conciliation of two opposing theories of value is not possible. One and only one will explain the phenomena; and it in the end must displace the other, no matter how much the weight of authority or of past usage may be against it.

SIMON N. PATTEN.

*Zur Theorie des Preises, mit besonderer Berücksichtigung der geschichtlichen Entwicklung der Lehre.* Von Dr. ROBERT ZUCKERKANDL, Privatdocent an der Universität Wien. Leipzig, Verlag von Duncker & Humblot, 1889. — 8vo, x, 384 pp.

He must write rapidly who would record as they appear the valuable works of the Austrian economists. Dr. Zuckerkandl has given us a critical history and somewhat more. He has traced the evolution of the theory of price for the sake of attaining a point of view from which to examine the theory itself. He has an introductory word on methods of study: deduction is legitimate when its basis is sufficiently broad and real, and the abuse that brings the entire method into dispute consists in founding a scientific system on assumptions that are too limited to correspond with the facts of life, and in giving to conclusions thus obtained an application that is nearly universal. No price theory can be broad enough to cover all cases; conclusions reached by the best of methods will not be universal.

The author gives some space to a study of nomenclature, and, with one qualification, agrees with that of Professor Menger. He traces the divergence of past theories from the right path to the fact that writers have started with the idea that values are governed, not by relations between men and commodities, but by outward facts such as changes of supply. This bias has led to "mechanical" theories, which fall into three classes according as they base the adjustment of prices on demand and supply, on cost of production, or on labor. Dr. Zuckerkandl takes first, however, the evolution of the "subjective" theories of value: those which are founded on relations between men and commodities.

shows the value of Turgot's analysis, and the loss suffered by later writers from a failure to follow in the line that he marked out, and points out the great advance made by Professor Jevons. The growth of the subjective theory in Germany he traces through a series of writers including Rau, Schäffle, Roscher, Hildebrand and Knies, and ending with Menger, von Wieser, von Böhm, Sax and Neumann. He then describes at length the development of the mechanical theories, and ends with a special study of the subjective theory itself in its latest and best form. Aside from its independent value the book constitutes an especially good introduction to the writings of recent economists of the Austrian school.

J. B. CLARK.

*Finanzwissenschaft.* Von ADOLF WAGNER. Dritter Theil: *Specielle Steuerlehre.* — Uebersicht der Steuergeschichte wichtigerer Staaten und Zeitalter bis Ende des 18. Jahrhunderts. — Die Besteuerung des 19. Jahrhunderts. Einleitung: Britische und französische Besteuerung. Leipzig, Winter'sche Verlagshandlung, 1889. — 8vo, xxxi, 916 pp.

*System der Finanzwissenschaft. Ein Lesebuch für Studierende.* Von GUSTAV COHN, ord. Prof. der Staatswissenschaften an der Universität Göttingen. Stuttgart, Ferdinand Enke, 1889. — 8vo, x, 804 pp.

The almost simultaneous appearance of these two works is an indication of the active interest taken by German students in the science of finance. An adequate presentation and comparison of the views contained in these latest additions to fiscal literature would require a separate article of many pages. It will be possible in this notice only to touch lightly on some of the more fundamental points.

The first volumes of Professor Wagner's *Finanzwissenschaft* are familiar to all students. Wagner is an acute original thinker, who started out almost two decades ago with the idea of publishing a new edition of Rau's finance, but who soon found his differences to be so great as to call for a new creation, rather than a new edition. The first two volumes of the work appeared years ago — the second in 1880. The third volume which has just been completed deals not with general theory, but with special questions in the history and practice of taxation. Unfortunately Wagner's plan was so comprehensive, his method so confusing and involving so much repetition, as always to make the ultimate completion of the work very doubtful. In fact, as the work progressed, Wagner entered into continually greater details which would have been in place only in a cyclopædia. The consequence is that it has taken him ten years to write volume three, and that he has been able to discuss the present condition of French and English taxation only.

Wagner himself has become tired of this minute method of proceeding and tells us now that he has practically abandoned the intention of completing the work. This is all the more to be regretted because the systems of France and England have already been made familiar to us by other good publications, while the condition of the other countries is far from being equally well known. Wagner shrinks from the labor necessary to write such a fourth volume; but he has himself to blame for being compelled to leave his work a torso. This new volume requires no especial commentary beyond the statement that in all his minute details of the history and practice of taxation, as well as in his general summaries of the French and English systems, he remains true to the ideas advanced in his former volumes. He has continually in mind the demands of what he calls the socio-political principles, the principles whereby the government is looked up to as the regulator of the distribution of wealth and taxation is regarded as a mere engine to redress the existing inequalities of fortune. Much as we may dissent from the fundamental points of Wagner's general financial position, it must be recognized by all that he has developed his doctrines with consummate keenness and phenomenal learning, and that his science of finance, even though a torso, still stands at the head of financial literature for the suggestiveness of its views and the wealth of its contents.

Wagner's pre-eminence, however, is likely to be seriously threatened by the appearance of Professor Cohn's *Finanzwissenschaft*. Cohn's book is constructed on an entirely different method. It forms the second volume of the general *System of Political Economy*, the opening volume of which was noticed in the *POLITICAL SCIENCE QUARTERLY*, volume 1, page 143, and which created a considerable stir throughout the scientific world. After a general introduction on the nature and history of the science of finance the first book treats of the essence of government economy or of the public household. It deals with public functions, public expenditures, the history and development of public revenue, and the budget. The second book discusses the principles, history and actual systems of taxation. The third book is devoted to a presentation of German taxation. Finally a fourth book treats of public credit.

The chief interest of the work lies in the first book and in the first chapter of the second book. The remainder of the volume is always interesting, as are all of Cohn's writings, but it contains nothing that can be called a signal contribution to financial science. He is indebted through his intimate acquaintance with Swiss financial methods, enabled to illustrate certain principles more successfully than any predecessors, but in the main he follows the rather conservative of accepted views. The book on German taxation gives an ex-

picture of the present situation, but does not need any discussion in this place. Finally the chapters on public credit contain an admirable historical survey, but in matters of principle do not afford us anything which cannot be found at least equally well said in Professor Adams' recent work.

It is otherwise with the discussion of the general principles of finance. Cohn's treatment of the various kinds of public contributions (*Die Arten des öffentlichen Entgeltes*) marks a distinct advance. His theoretical separation of fees, assessments, taxes, *etc.* is based upon an analysis of comparative private and public benefits, and he thus attains a satisfactory solution of a problem that has always caused the German scientists much trouble. His description of the historical development of public economy is clearer than that of Roscher, and traces the chief lines of development with a master-hand. His short discussion of the principles of local finance is a veritable relief when compared to the laborious and confused chapters to be found in other treatises.

Most striking is the treatment of the equities of taxation. Cohn shows that just as the accepted ideas of justice are a product of historical evolution, so the conception of just taxation has assumed a different form in every stage of human progress. He gives an interesting historical sketch of the different ideas that swayed the public mind at various epochs, and then devotes himself in particular to a consideration of proportional *versus* progressive taxation. The result of the long discussion is the adoption of the principle of progression, not for Wagner's socio-political reasons, but simply because under modern conditions proportional taxation no longer corresponds to taxable capacity. Cohn seeks to define and limit the principles of progression, and in connection with this gives a stimulating history of the doctrine of the "minimum of existence."

This is not the place to attempt a criticism in detail. That must be reserved for another time and place. Weak points are not lacking, as *e.g.* in the discussion of the incidence and diffusion of taxation and in the treatment of the property tax. It will have served our purpose to call attention to the subjects in which Cohn's book marks a distinct advance on its predecessors. Wagner, Roscher and Cohn supplement one another. Wagner is more radical and audacious in his suggestions and illustrates his theories by a wealth of statistical material; Roscher is weak in theory but strong in history; Cohn seeks to keep the golden mean. But in two respects Cohn's finance is superior to all others—in clearness of style and in philosophic breadth of view. We welcome this new accession to economic literature as one of the most important works of the decade.

EDWIN R. A. SELIGMAN.

*History of the Ancient Working People, from the Earliest Known Period to the Adoption of Christianity by Constantine.* By C. OSBORN WARD, Translator and Librarian, U. S. Department of Labor. W. H. Lowdermilk & Co., Washington, 1889.

This is the first considerable attempt, so far as I know, to set forth in English a history of the producing classes of antiquity. Mr. Ward has encountered the difficulties of such pioneer work with courage and zeal, but he has not all the qualifications for entire success. His spirit, in the main, is admirable, but it is dashed with a vein of enthusiasm which not infrequently finds expression in a vague and mystical rhetoric. His scholarship is extensive but undisciplined; one misses the exercise of a trained critical judgment. With remarkable industry he has brought together a mass of information not accessible in our histories, but it is not carefully sifted and one finds much hasty generalization and dubious philosophy. A very serious defect in the book is its lack of systematic arrangement. It professes to cover a very long period, but the author seems to have no adequate sense of time. This appears chiefly in his marshalling of the evidence in regard to the ancient labor organizations. It is derived from all ages and is often applied as if the organizations were the same at all times. There was a notable increase of *collegia* under the favoring legislation of the Antonines, but Mr. Ward is so convinced of the prevalence of trade unions in prehistoric times that he does not give sufficient attention to the stages of their development in historical times. Critical attention to chronology would have greatly improved his chapters. With Mr. Ward, Numa is as historical as Julius Cæsar, and the legislation of Lycurgus is as authentic as that of Solon.

The first one hundred pages is the least valuable portion of the book. It is pervaded by a most distorted view of ancient society, which seems to have come from a misapprehension of Fustel de Coulanges. Mr. Ward thinks that the vast mass of Roman slaves consisted of the younger children of the free citizens! The first-born succeeded his father, the rest of the children became his slaves! Pages 133-332 are devoted to a history of ancient slave insurrections, which, on the whole, deserves praise. It is based on the original sources and German monographs, and the narrative is lighted up by a deep sympathy with the oppressed. The last third of the volume deals with the ancient organizations of free laborers and is derived from a thorough study of the inscriptions and of Mommsen's essay *De collegiis et sodalibus Romanorum*. The defects in arrangement and the lack of chronological detail have been referred to. Mr. Ward's zeal and industry in elucidating a very obscure subject deserve warm recognition. Mr. Ward, however, rather overestimates



the completeness with which he has canvassed the existing literature of the subject. He does not mention Levasseur's *Histoire des classes ouvrières en France*, Wallon's *Histoire de l'esclavage dans l'antiquité*, or Dureau de la Malle's *Économie politique des Romains*. Levasseur's work would have given him a model as regards arrangement and method. The article of Mr. W. A. Brown in the *POLITICAL SCIENCE QUARTERLY* for September, 1887, would have given him light on the relation of the state to labor in the latter part of his period.

Chapter XXII is an attempt to show that historically the red flag has always been the peaceful standard of labor, and that consequently squeamish people should not object to processions of anarchists flying "the incalculably aged flag of labor." The case is hardly made out, but many interesting facts are mentioned. No light at all is thrown on what the red flag means to its modern bearer, which is the essential point. The corner stone of the theory, as is not infrequently the case, is a false etymology. The last chapter is a good specimen of the author's vague and mystical philosophy of history.

Some of Mr. Ward's theories are unique. He found Diodorus a valuable source, but was embarrassed by the losses his work has suffered. Diodorus evidently told too much truth. "We, in consequence, as students of sociology, must charge against that slave-holding aristocracy all mutilation of his history . . . A large portion of the details . . . has apparently been sequestered through the vandalism of contemporaneous censorship." He adds: "A similar outrage has been perpetrated upon Livy's history of Spartacus, proved by the epitomes or chapter headings xv, xvi, xvii, which have survived the wreck." Sallust was similarly tampered with. (Page 211, and note 51.) The desire to be realistic and vivid leads Mr. Ward too far in the application of modern terms to ancient things. Slaves are "workingmen," and slave insurrections "strikes"; the cruel slaveholder Damophilus is termed a "millionnaire." It is a sore temptation with ardent reformers to conceal an argument in every epithet, and Mr. Ward often yields to it. His notion of a workingman is certainly comprehensive, for it embraces not only the slaves but such men as Phidias. Mr. Ward's fervor leads him into some errors of interpretation, a few of which may be noted. On page 277 he says: "Often young children were driven naked into the arena, given knives, and forced, for the amusement of these truculent nobles, to struggle in the awful qualms of danger and death until the little innocents, one or more, fell dying in their bath of blood." What is the proof? The statement of Nicolas of Damascus that a certain man once left a provision in his will for such a contest, but that the people, horrified at the cruelty, frustrated the design. Mr. Ward's statement is not supported by this evidence. On page 154 he says: "It was ordered

that the Carthaginian hostages be degraded to the condition of slaves to work for private individuals." What Livy says is: "Ut et obsides in privato *servarentur*." (Page 151, note 18.) On page 355 the sense is entirely missed by rendering "*dolus malus*" "pain."

The proof-reading is very carelessly done. The attempt to read the Greek or Latin notes is an admirable exercise in textual emendation. An analytical table of contents ill supplies the lack of an index in a volume containing such a variety of matter.

EDWARD G. BOURNE.

*Fabian Essays in Socialism*, edited by G. BERNARD SHAW. Published by the Fabian Society, London, 1889. — 233 pp.

This book contains a course of eight lectures, delivered in 1888, by members of the Fabian Society. They set forth in part at least the theory and programme which the members of that society hope gradually to induce the Liberal party to adopt, and with its help to embody in English law. The authors deal almost wholly with English conditions and problems. The writers to whom they refer as authorities or antagonists are English, or those whose works exist in English translations. The result is that the errors of the Manchester school are again exploited for the benefit of social democracy, and much well-beaten straw is threshed again in the hope of finding grain.

The first part of the book is devoted to a criticism of existing social institutions in England. They are studied from the economic, the historical, and the moral standpoints, with the purpose of showing that they have failed to secure national health, and that tendencies are now at work which will overthrow them and prepare the way for the socialistic state. In the second part the organization of property and industry under the socialistic state is described. Finally the method of transition to the new order and the prospects of the movement are outlined. We are told by the editor in the preface that the work, both in its form and substance, is "a sample of the propaganda carried on by voluntary lecturers in the workingmen's clubs and political associations of London." Though the scientific value of the lectures may be lessened thereby, the interest attaching to them as results of a persistent attempt to influence English opinion is increased.

Within the limits of this review it is impossible to glance even at the contents of all the essays. The writer will state what seems to be some of the leading features of the book.

That the question of land and rent should occupy a prominent place is natural. Mr. Shaw opens the discussion with a paper in which he generalizes Ricardo's law of rent in such a way as to account *a priori*

for the existence of an unproductive landlord class, over-population and starvation wages. He sums up his analysis as follows :

Incomes derived from private property consist partly of economic rent ; partly of pensions, also called rent, obtained by the subletting of tenant rights ; and partly of a form of rent called interest, obtained by special adaptations of land to production by the application of capital ; all these being finally paid out of the difference between the produce of the workers' labor and the price of that labor sold in the open market for wages, salary, fees, or profits.

The conclusion is that economic rent should be appropriated for the good of the community, and the other forms of rent no longer exacted. The method of treatment is essentially the same as that by which Bastiat reached the opposite conclusions. The one is no more convincing than the other.

Mr. Clarke traces the growth of capitalistic production till it has culminated in the trust and annihilated free competition. Mr. Webb shows how the theory of *laissez faire* had to be abandoned, and the state was forced to interfere to check the evils which developed during the first half of this century in the English factories and mines. That interference has gone on till now a large number of industries are controlled to a greater or less extent by the state or municipality. This, it is argued, is an evidence and a result of the growth of the democratic spirit. With that has arisen the true organic conception of society. With the triumph of democracy in England, which is regarded as certain, will come the overthrow of individualism and the establishment of a socialistic régime. Industries organized under the form of the trust are ready for absorption by the state.

Several of the writers declare themselves opposed to the construction of ideal commonwealths. They say that this was an amiable weakness of the older socialists, but that experience and the study of evolutionary philosophy have shown it to be unscientific and useless. It will be sufficient, they say, to proclaim our destructive criticism of the present social order, and to aid the progress of those measures of reform the object of which is to improve the machinery of government and make it more serviceable to the masses. But the socialist must have an ideal, whether for tactical purposes he conceals it or not. Hence we find that Mr. Wallas and Mrs. Besant have sketched the future social state, and its outlines will be familiar to all students of social-democratic theories.

Some statements in the last article, by Mr. Herbert Bland, together with a few passages occurring elsewhere in the book, would indicate that the members of the society are not fully agreed as to the methods of their propaganda and the probable result of the movement. The policy of force all emphatically reject. Mr. Bland has very rational doubts as to the possibility of leavening the Radical and Liberal parties with socialistic

leas. Much that is called socialism in this book is only enlightened, rogressive liberalism, and every advance in that direction renders the ices of social democracy less probable. Even the writers see no respect of the success of a purely socialistic party in England at present. he progress of the movement will be watched with interest.

H. L. OSOOD.

*Individualism. A System of Politics.* By WORDSWORTH DONISTHORPE, Barrister at Law. London Macmillan & Co., 1889. — 393 PP.

The essays on sociological problems which Mr. Donisthorpe has collected under the above title are characterized by aggressiveness in both style and method. The proportion of destructive criticism to constructive work is large throughout the essays. This criticism indeed is often keen and forcible as it is always vigorous, and it aids indirectly in elucidating the author's "system" of theoretical and practical individualism. His plan of campaign involves a sharp attack upon the absolute individualism maintained by certain "extreme individualists," as well as a constant warfare against both the delusive gospel of socialism and the measures of legislative interference supported by English "neo-radicals." These measures are denounced by the author as essentially and dangerously socialistic. When the author arrives at his practical programme, his advocacy of "labor-capitalization" as an individualistic solution of labor-troubles is conducted in a particularly militant spirit as regards economists and their inconveniently narrow definitions of capital. There is apparent a disposition to magnify the remedy advocated at the expense of any plans and efforts on other lines for the laborer's welfare.

In the way of positive theory Mr. Donisthorpe aims to set forth the principles of an individualism which would be consistent with the mechanically conceived evolutionary movement of society and its institutions. In respect of this, Mr. Spencer himself is weighed and found wanting. He is detected (*cf.* page 271) in setting up for the defence of the individual against the majority a claim of natural rights; as still manifesting a faith "in abstract justice, as something anterior to society even to man." On the contrary, liberty and justice are gradually evolved and hence of a relative character at any given time in the process. What can be made out, is the present tendency of the social movement. Mr. Donisthorpe finds it a little embarrassing to show, in view of what he elsewhere describes as "half a century of so-called practical politics," that the present tendency of social evolution is toward the minimizing of interference"; but he faces the difficulty boldly with the statement that the phenomena referred to are temporary.

and superficial; the undercurrent is the other way. We are referred for evidence of this to a wider induction from English history. The tendency being demonstrated, the *onus probandi* is always upon those who advocate measures of interference. Socialism is reactionary and it is unwise; for "socialists professing evolution advocate artificial selection, whereas individualists [*i.e.* of Mr. Donisthorpe's special school] put their faith in natural selection," and the latter represents the operation of the unlimited as against the limited insight of man. This subject however is fully treated only in the latter part of the volume. It will be recurred to after noticing some of the more important ideas of the book in regard to political and economic matters.

Three chapters on the nature, structure and functions of the state are well worked out from the general idea of the state as an organism, conceived in accordance with biological analogies and developing under the laws of social evolution. The nature of the state is that of an organism whose essential attribute is the ability to co-ordinate its parts. This gives at once the limit of effective state organization and the principle for differentiation of the parts. There can be no considerable state without some kind of local government; but the local divisions should be natural ones instead of being made on arbitrary or accidental, because traditional, lines. The true limits of the imperial functions and the residual local functions are defined by the principle of decentralization, interpreted as meaning not local legislation but local administration. England and America are referred to as now exhibiting tendencies to exchange with each other their hitherto guiding principles as to local government. Mr. Donisthorpe puts forward his doctrine of the *Individualization of Local Government* as an ideal to be gradually approached.

As regards the structure of government, power gravitates toward numbers and democracy is inevitable. Our author exhibits little if any more confidence than Sir Henry Maine in the capacity of the people at large for self-government considered as legislation; but he accepts the democratic tendency as a beneficial one, provided "that the function of the citizen is the safeguarding of his own liberties and not the manufacture of restraints on the liberty of his fellows." Democracy is moreover to be understood as the government of the people by the *whole* people; it is not the numerical majority but the effective majority, the weight of social forces, in fact, that governs. The government by the *whole* acts as a safeguard to the individual, since the power of interference is limited by the necessity of effecting a consensus of so many varying or conflicting interests and wills; hence, also, another argument for central legislation, with local power of administration.

Under "Functions of the State," Mr. Donisthorpe notices that "struc-

iral changes in the state are working changes in the views of the ultimate governing body as to the duties of the state." He takes indeed a pessimistic view of the effect of the interfering legislation of the last half century in England, representing its results upon English character in the most sombre colors, and foreboding evil effects on the national capacity for self-government through "the weakening and supplanting of contractual rules by central legislation." He finds urgent need for merely indoctrination of the classes who are coming into political power with the belief that the best medicine for all social ills is liberty.

Mr. Donisthorpe next addresses himself to current social issues, especially land tenure and the labor question. The latter is the more urgent with the author, as he accepts fully the "iron law" and takes a dark view of the operation of the wage-system. An interesting analysis of the legal conception of property and a criticism of standard economic definitions of capital prepare the way for the enunciation of a property right of the laborer in the product. This he of course legally resigns in the wage-contract, but might under "labor capitalization" assert as the basis of a claim to a share of profits. Capital is so defined as to include labor (or the laborer); hence the laborer should justly receive, not indeed a share of the profits on "non-human" capital, but the whole profit on his investment of human machine-power, in addition to his wages. In bargaining away this right, laborers "give away the interest on that valuable property,—their own selves." Mr. Donisthorpe in his onslaught on the economists and their definitions fails to recognize that Mr. Sidgwick and others indicate *personal* capital; but of course for the purpose of his argument laborers' force must be recognized as in every sense capital. Making it such by definition does not however resolve any of the obvious practical difficulties as regards distant settling days, sharing of losses, &c., which the laborer would have to meet to place his labor power on equal terms with "non-human capital." But Mr. Donisthorpe's arguments for the equity and advantage of a system which would fully enst the self-interest of the laborer in production are generally valid for industrial partnerships and schemes of co-operative production, though he makes but grudging admission of the merits of these methods.

The discussion of the part played by labor in the production of wealth furnishes occasion for effective criticism of theoretic socialism, as falsely declaring that "because the creator of wealth has a right to the fruits of his labor, therefore existing laborers have a right to the fruits of past labor." Vigorously also is the pretence repudiated that all co-operation is socialistic. Socialism and individualism both look forward to increased co-ordination of industry; the whole difference is that between voluntary co-operation and compulsory co-operation. Socialism would relax internal incentives, would substitute external coercion.

In an ably written chapter on the "Basis of Individualism," which originally appeared in the *Westminster Review*, Mr. Donisthorpe makes the keen criticism of Mr. Spencer before referred to, with reference to his departure from the evolutionary method, and works out what we have above indicated as his view of a tenable basis. He points out how the progressive evolution of law takes place in a state through action and reaction of the units upon each other in the direction of adapting the conditions to mutual welfare. "Personal liberty is the final outcome of social evolution, and not the cause." The organized social control which was once a factor in social integration cannot now be a factor in social disintegration, as the worshippers of liberty pure and simple (like Mr. Spencer and Mr. Auberon Herbert) maintain. Compulsion will be minimized in conformity with the growing tendency of social evolution, but no fixed rules can be laid down. What is needed is "to discover, not to *manufacture*, the true statical laws which are actually operative in societies." "The art of politics is the application of the science of nomology to the concrete." Middle principles of practical application will be brought to light by a patient and intelligent study of nomology.

Mr. Donisthorpe appears to hold with the German school of jurists to the existence of certain statical laws or internal group-morals, which at any given time or place tend to hold good and to guide the unconscious development of law. In this view, however useful up to a certain point, we seem to miss the element of the struggle for justice as a shaping force in law, which Ihering has so eloquently emphasized, and to find explanation for a certain excessive aversion to the interference of legislation. Putting it otherwise, there may be too great a deference for mechanical evolution, and too little faith in the potency of the rational and voluntary element to call out the proper influence of that element. Yet our author's style and method, though more subdued in this particular chapter, hardly betray the influence of a serene and tranquillizing, not to say soporific, system of social philosophy!

G. B. NEWCOMB.

*Essays on Government.* By A. LAWRENCE LOWELL. Boston and New York, Houghton, Mifflin & Co., 1889. — 12mo, 229 pp.

Under the influence of the late Mr. Bagehot's writings, it has become quite the fashion to make comparisons between the American and English forms of government, generally to the disadvantage of the American. Those who are chiefly intent on the study of the mere methods of government, while leaving out of view the more remote and less obvious effects which such methods may produce, are quite likely to see in the American system of legislation a very bungling arrangement. What is needed, they assume, is some method by which the will of the majority

in be efficiently and rapidly carried out. Such a system exists in England — and what can be more simple than to import from that country the form of responsible cabinet government, by means of which, as Mr. Dicey says, Parliament can repeal the union with Ireland almost as quickly as a probate judge can dissolve a contract of marriage?

In the first, second and fifth of the essays before us, Mr. Lowell defends the American form of government and shows the weak points of the opposing system. While advocating popular government, he believes that in order to protect the minority and the individual it is necessary that there should be a limit to the power of the majority. It is evident from recent legislation in England, as Mr. Lowell asserts, that the respect for law and custom which has hitherto restrained the majority is sensibly diminishing. The common assumption that Parliament's power is limited only by its will makes every issue a question not, as formerly, of law, but rather of expediency. Even the Bill of Rights and Magna Charta, intended to protect the people from attacks on the part of the kings, are not sufficient to restrain the action of Parliament. "To so great an extent is this true, that property in England is, on the whole, less secure from attack on the part of the government to-day than it was at the time of the Stuarts." "The Americans," continues Mr. Lowell, "are the only people who have set themselves to work to solve the problem of restraining the power of the majority." In other words, they have set bounds to the power of the legislature, whereas in England the legislature has absorbed all the power of the kings without being bound by the checks imposed upon them. "The refusal by the possessor of political power to make use of it requires the exercise of great self-restraint; and the art of framing a limited government, like the art of civilization itself, consists not only in developing the habit of self-control, but even more in removing temptation, and in making that self-control as little irksome and, indeed, as little conscious as possible." This end has been to a great extent attained in the United States by the creation of several independent political bodies, each of which is restrained by the presence of the others, while all are amenable to the final authority of the constitution; and the expression of the supreme popular will is so surrounded with formalities that a change of the fundamental laws may not take place without the greatest amount of discussion and reflection.

Mr. Lowell takes the ground not only that recent legislation has gone much further in England on the road towards socialism or parental government than it has in the United States, but that it is much easier to do so under the English form of government. And it is clearly this reason that he would deprecate the introduction of the European system into our government. The first essay discusses the pro



effect of such a change. That cabinet government would reduce the president and Senate to very inferior positions scarcely needs to be argued. But further than this, as Mr. Lowell points out, it would tend to undermine the autonomy of the states, the independent position of the Supreme Court, and the force of the constitution itself. In other words, it would greatly weaken, if it did not destroy, the whole federal system. It is impossible to give briefly an adequate conception of the close and logical reasoning by which Mr. Lowell arrives at these conclusions. He shows a thorough grasp of the subject in all its bearings.

The fifth essay is a carefully reasoned and well-sustained argument against the theories of the analytical school of jurisprudence. Probably most common-law lawyers still adhere to the Austinian doctrine that "law is the command of a political superior, accompanied by a sanction, to a political inferior," and that there is "no limit to the power of the sovereign." Yet, under the lead of Sir Henry Maine, there has arisen a pretty wide-spread revolt against that doctrine. Perhaps Mr. Lightwood's book on the *Nature of Positive Law* is the best exposition of the ideas of this new school. Some writers, as Mr. T. J. Lawrence, even deny that force is the essential element in a sanction. Mr. Lowell has argued mainly the question as to the limitation of sovereignty. He charges Austin with reasoning in a circle and with having unwarrantably assumed one of his premises. The objection to Austin's theory is that it requires at all times a visible sovereign, ready to act and without restraint. No such sovereignty exists in the United States, and it is doubtful if it exists anywhere without some limitation.

The third essay treats of the position and functions of the legal profession in our system of government. The fourth is an interesting historical account of the development of the "social-compact theory," as expounded by Hobbes, Locke, Rousseau, Kant and others, with its application in the Mayflower compact and the Massachusetts Bill of Rights.

This volume of essays will be welcomed by all students of political science. It is an admirable specimen of intelligent and unimpassioned reasoning upon the subjects about which it treats.

FREEMAN SNOW.

*Martin Van Buren, to the End of his Public Career.* By GEORGE BANCROFT. New York, Harper and Brothers, 1889. — 239 pp.

Two years ago Mr. Edward M. Shepard formally re-opened the case of Martin Van Buren. The candid narrative and independent yet sober judgments of the volume which he contributed to the *American Statesmen* series are well calculated to dispel prevalent misconceptions. The book before us continues this good work. Mr. Bancroft has pre-

d in clear outline the political career of Van Buren from its beginning just before the outbreak of the second war with England to his final retirement from the presidency in 1841. The first chapter, 1, is entitled "Early Life," covers the period previous to his election 12, at the age of thirty, to the Senate of New York. The narrative is almost exclusively with his study of law, his immediate and deserved professional success, and his early participation in politics. The second chapter, the title of which is "Eight Years in the Legislature of New York: 1810-1820," describes a great deal of capital work for democracy, for the State of New York, and for the Union. "In his first legislative year," Mr. Bancroft, "he sustained the war, foreshadowed the evils of unregulated banking and protested against imprisonment for debt." If to this enumeration a constant and efficient support of the Erie and Champlain canal projects be added, we have the main features of his legislative programme for the entire period. The third chapter, on "The State of New York in Convention: 1821," is one of the best in the book. Van Buren rendered distinguished services in this very important body, the account describes them worthily. The fourth chapter, which is of Van Buren's work in the Senate of the United States from 1821 to 1829, shows that he was not less faithful and courageous in his support of democratic ideas at Washington than he had been hitherto in his State. The fifth chapter relates his experiences and conduct as Secretary of State, as minister, and as vice-president, from 1829 to 1837. The sixth and final chapter deals with Van Buren as president.

Mr. Bancroft follows the excellent method of letting his subject speak for himself. A large portion of the book is made up of quotations from his speeches and other public utterances; indeed, so numerous and well chosen are these passages that the attentive reader can obtain from them at once a very fair acquaintance with Van Buren's political views. Every such reader, if unprejudiced, will be ready to concede that from 1805 to 1841 the political career of Van Buren was based on well defined principles; and that in the support of these principles, he showed moderation, a consistency, a firmness, and a courage which are as rare in the annals of politics as they are honorable. Mr. Bancroft's conclusion "the characteristics of Van Buren as a statesman were a firm adherence to principle and, in the darkest hour, a bright and invigorating hopefulness," seems felicitous because it seems amply proved.

While this book serves a good cause and serves it well, it is not altogether satisfying. It breaks off before the end is reached. The title "*Van Buren to the End of his Public Career*;" and the volume terminates in 1841, twenty-one years before Van Buren's death. During this eventful period he was always an interesting figure in politics, and at times a powerful factor. Moreover it was during these

years that he experienced that singularly complete loss of public confidence which Mr. Bancroft seeks to restore. A just estimate of a public man must take into account every portion of his public conduct. In the second place the tone of these chapters is too unvaryingly eulogistic. It may seem presumptuous to criticise the literary art of Mr. Bancroft, but one cannot help thinking that the picture he has painted would be more distinct and impressive if it were not so lacking in shadow. In Van Buren's relations to the civil service, to slavery, and to the "gag laws"—which Mr. Bancroft seems almost to ignore—there is something which to most Americans does not readily explain itself. Lastly the strong Democratic sympathies and convictions of the writer are so apparent that with a large and important class of citizens his plea will not have the weight to which, on the score of merit, it is justly entitled.

ANSON D. MORSE.

*The Constitutional History and Government of the United States.*

A Series of Lectures by Judson S. Landon, LL.D. Boston and New York, Houghton, Mifflin & Co., 1889. — vii, 389 pp.

*The Constitutional History of the United States as seen in the Development of American Law.* A Course of Lectures delivered before the Political Science Association of the University of Michigan by Judge T. M. Cooley, Hon. Henry Hitchcock, Hon. George W. Biddle, Professor Charles A. Kent, Hon. Daniel H. Chamberlain. New York and London, G. P. Putnam's Sons, 1889. — 296 pp.

Each of these volumes contains a course of lectures delivered before college students. Professor Landon's book presents the instruction offered to the senior class at Union College during the four years that he presided over that institution. The other volume consists of a series of five discourses before the students of all departments of the University of Michigan, prefaced by an introduction from the pen of Professor Henry Wade Rogers.

Professor Landon has undertaken the great task of presenting a view of the constitutional history and law of the United States and an examination into the philosophy of our complicated political system within the compass of fifteen lectures. It must be admitted that he has achieved a great if not an unqualified success. He has recognized the limitations imposed by time and space and has carefully and wisely selected the most salient facts from the great mass of details. Still his lectures are far from a dry statement of principles; he has introduced just enough illustrations to impress the theories upon the memory of hearer or reader without overburdening it.

The chief objection to his work lies in the fact that it does not exhibit sufficient familiarity with the fundamental notions of political science. The author does not appreciate the scientific meaning of such terms as nation, government, sovereignty. His exposition is not based upon the principles which govern political and social activity; it follows that the historical events of prime importance "happen," according to Professor Landon, instead of resulting as the inevitable consequence of existent conditions or events. In a word, the causal nexus is not stated, and the most valuable lesson of constitutional history is lost. A specific defect arising from the ignoring of the laws of political science is the very inadequate treatment of the power of amendment in the constitution. Furthermore, the author is sometimes loose in his use of language with which every constitutional lawyer and every well-educated politician must be familiar.

The second and third parts of Professor Landon's book deserve no other than praise. They treat of constitutional law, and especially of the functions of the Supreme Court; of the nature of the government, the dangers which beset it, and its probable future. They are altogether free from the blemishes pointed out above. Especially good is the tracing of the development by which the Supreme Court has advanced to the exalted position it now holds from that which it occupied during the first twenty years of its existence. The somewhat narrow spirit in which the last amendments have been interpreted is also pointed out and traced to the Slaughter House cases in 16 Wallace to Spier's case in 123 Reports.

It is to be hoped that a second edition will contain a list of cases, the absence of which impairs the value of Professor Landon's book as a book of reference.

The University of Michigan lectures contain an extended examination of Professor Landon's second topic. Four jurists have divided the century of the Supreme Court's existence between them. Judge Cooley of the time of Chief Justice Jay; Mr. Hitchcock of Chief Justice Marshall's incumbency; Mr. Biddle of Chief Justice Taney's; and Professor Kent of the years since 1864. Mr. Chamberlain adds a lecture on "The State Judiciary and its Place in the American Constitutional System."

Judge Cooley begins his contribution with an explanation of the novel position assigned to the federal judiciary—that of a co-ordinate department of government, charged with the duty of interpreting the supreme law and pronouncing upon the validity of the acts of the other departments and of the organs of local government. He then shows in how successful the experiment is due to the wisdom, statesmanship and courage of John Jay. Omitting any reference to the periods when

Rutledge and Ellsworth presided, Mr. Hitchcock resumes the thread of the court's history with the accession of John Marshall. One by one the questions that the court discussed between 1801 and 1835 are taken up, and the development of the branch of constitutional law involved in each is adequately traced. This lecture is the gem of the volume. In simplicity, clearness, learning, and breadth of treatment, it is classical. In the skill with which the work accomplished by the great chief justice is summed up, it resembles an opinion pronounced by that most illustrious of American lawyers himself.

Mr. Biddle has chosen another method. He takes up seriatim the volumes between 10 Peters and 1 Wallace, and selects from each the cases that he thinks of prime importance. In this manner he examines fifty-eight cases. A great many of them are not upon points of constitutional law at all. Some are on questions of practice, some on matters which came before the Supreme Court merely because of the character of the parties. It is submitted that the chronological method is not equal to the topical in presenting a subject of this nature. Mr. Biddle brings out very clearly the great work accomplished by Taney in extending the admiralty jurisdiction of the federal courts over the Great Lakes ; and his discussion of the Charles River Bridge case and of the Dred Scott case is careful and interesting. Perhaps to the study of Taney's judicial opinions is to be attributed the somewhat particularistic view that Mr. Biddle takes of the relation of the commonwealths to the nation and to the federal government.

It was intended that the fourth lecture should be delivered by the late Mr. Justice Matthews, but his illness and untimely death prevented the accomplishment of this plan. Professor Kent accordingly prepared a lecture on this subject, which shows traces of hasty preparation. All the questions raised by the Civil War are disposed of in one page : the dictatorial power of the president, the position of the seceding states during the pendency of the Rebellion, contracts by rebels and the acts of the Confederate government. Reconstruction, the legal-tender act, the national banking act, the civil rights bill, and the subject of federal regulation of the congressional elections, are discussed at greater length. Somewhat amusing is Professor Kent's assertion (on page 234) "that no permanent evil has resulted" as yet from the extension of the power of the federal government by the last three amendments.

Mr. Chamberlain gives an interesting discussion of the question as to how far the federal judiciary is bound by the decisions of commonwealth tribunals. It contains the same misapprehension of the terms of political science that was noticed in Professor Landon's book. This leads the lecturer into very dubious expressions ; as when he says, speaking of the commonwealth and the United States : "Each is truly sovereign ;

truly limited in its sovereignty." The term "limited sovereignty" o have a peculiar fascination for him. In discussing the concur- isdiction of the federal and commonwealth courts arising out of racter of the litigant parties, Mr. Chamberlain fails to appreciate at work of the federal judiciary in reconciling the conflicting is of commonwealth tribunals and in giving us a national, common rcial law.

ROBERT WEIL.

*Origin and Growth of the English Constitution.* By HANNIS OR. In Two Parts. Part I: *The Making of the Constitution.* n and New York, Houghton, Mifflin & Co., 1889.—8vo, xl, 2p.

is work an attempt is made "to draw out, within the limits of avo volumes, the entire historic development of the English tional system, and the growth out of that system of the federal nent of the United States." The author considers that Kemble lgrave opened the path and Freeman and Stubbs made broad way to a scientific knowledge of English political history. From ss of facts drawn by these scholars from the sources, it must abor of some one to make the broad generalizations which con- the essence of philosophic history. To this task the author himself, seeking with the aid of the historical method "to trace hty stream of Teutonic democracy from its sources in the village nd state assemblies of Friesland and Sleswick across the North- aan into Britain, and across the Atlantic into North America," doing for "Teutonic democracy" rather more than John Richard did for the English people; for though the latter writer started e same nebulous neighborhood, he pursued his subject across e ocean. It is easy to see that Mr. Taylor's unconcealed ad- i for Professor Freeman has made him an ardent worshipper of sm triumphant; and perhaps the highest praise that his work that he does not allow his devotion to this idea to make him us.

olume which has now appeared narrates the development of the constitution until the era of the Lancastrians, when the author rs that the structure was complete in its essentials. Criticism erts is disarmed by the obvious and avowed dependence upon n and Stubbs. His consultation of the sources, so far as the ies of his predecessors have ferreted them out and made them e, has been very in the way of verification. While his work, and it be ranked with the profound and original productions on e subject, it may challenge the appreciation due to a concise

and effective presentation of the substance of these earlier studies in a convenient and systematic form. The middleman has as distinct and useful a function in the dissemination of knowledge as in the distribution of material goods, and this function Mr. Taylor has excellently fulfilled. To the consumer who recoils before Bishop Stubbs' three volumes, the single volume before us will prove deservedly attractive. If any fault were to be found with Mr. Taylor's work, it would be that in the fascination which the subject exercises upon him he has allowed himself to follow his masters now and then too far into the realm of detail. A hundred pages might be eliminated without detriment to the professed plan of the book. Much of this superfluity is easily traced to the author's respect for the early Teutons and to the assumed necessity for believing that all that is valuable in the institutions of the United States originated in northwestern Germany.

In the introductory chapter is outlined the broad theory which it is the purpose of the book to illustrate. The chapter begins with the original Aryans and concludes with a discussion of the Slaughter House cases in the United States Supreme Court. Summarily, it outlines the doctrine which Freeman especially has developed, — that the great characteristics of the modern constitutional state are the principles of representation and local self-government; that these principles, so far as found in other modern states, have been borrowed from England; and that their existence in England is due entirely to the Teutonic element in the English state, by which element the ideas were imported into England from the continental homes of the invaders. Representation and local self-government alone make possible the free national state of to-day as contrasted with the free city-state of the ancient world, and each of these is a "Teutonic invention." There is much in this doctrine that is very attractive to the philosophical historian, and the labors of the great scholars who have wrought out its supports have won for the workers world-wide reputation and respect. But more or less discredit has been thrown upon the theory by the expressions of some of its over-enthusiastic admirers, who have not hesitated to proclaim that practically the whole fabric of modern civilization rests upon the simple fact that some half-savage villagers in Sleswick and Friesland used to send some of their number now and then to wrangle over neighborhood matters with their kinsmen from other villages.

A scientific appreciation of the elements of the English constitution will give great weight to the persistence of early Anglo-Saxon ideas; but it will not slight another most important consideration. The kingdom of England was not welded into unity, as sometimes seems to be assumed, by the mere agreement of petty autonomous states to coalesce. Force was the instrument of fusion, and the strong men who successfully

ed this means were not less animated by the imperial instinct those who did similar work on the continent. The much-lauded principle of local self-government, left to itself, would have ended or still further subdivided the Heptarchy. Feudalizing parliamentism was practically triumphant in England when the strong family Bastard established a stern but wholesome central power. There is federalism in the Norman principle; whatever the theory, that he was in fact imperial, and as such it made England, as we know it. This is the point which is apt to be slighted by the admirers of parliamentism, and it is this thought which must be carefully kept in mind by the reader of Mr. Taylor's book. It must be said, however, that the treatment of the Norman period and of the royal power as then exercised is in the main very fair and is certainly very interesting. The charge of ultra-Teutonism which appears in his introduction is scarcely in the body of the work.

The grand divisions of the present volume are entitled "The Old-English Commonwealth," "The Norman Conquest" and "The Growth and Decline of Parliament." In the last section is given a summary of a prospective view, in which latter the second volume is outlined as it pertains to parliamentary history in England. What the views of the United States constitution are to be is not discussed.

The two volumes promise to form an exceedingly useful commentary on the history of constitutional history. The value of the first is enhanced by an elaborate analysis of the contents. As to the accuracy of Mr. Taylor's statements no fault can be found, but an inexcusable error appears on the fourth page. Aristotle is made to express the opinion that "the state differs from the household as to the number of its members." A little care would have showed that Aristotle mentions this as a doctrine of certain philosophers (including Plato), declares it to be a false doctrine ("ταῦτα δ' οὐκ ἔστιν"), and enters into his famous analysis of the household to prove it false.

WM. A. DUNNING.

*before the Parnell Commission.* By Sir CHARLES RUSSELL, Bt. Q.C., M.P. London and New York, Macmillan & Co., 1889. 12mo, 615 pp.

A scientific treatment of a great public question can scarcely be looked for in the plea of an advocate; yet in this substantial volume, which contains Sir Charles Russell's opening speech for the defence, the student of English history may find invaluable material for the elucidation of existing problems. While it must be borne in mind that but one side of a controversy is presented, immense aid is to be derived for com-



prehending the whole from the clear and systematic form in which the brilliant pleader has arranged the part. Supplemented by the address of Sir Henry James on behalf of *The Times*, nothing more will be necessary for an intelligent judgment on the present relations of England and Ireland.

Mr. Parnell's counsel at the outset protests against the apparent assumption by his adversaries that the agitation which took form in the Land League of 1879 is an isolated phenomenon, to be investigated and judged without reference to earlier history. On the basis of this protest, a hundred pages of his address are devoted to an historical survey of Irish agrarian and political agitation. He makes it perfectly clear (and, with a lawyer's adroitness, largely by quotations from Tory sources) that there was nothing unprecedented either in the causes, the results or the forms of the disturbances which characterized the period of Land-League activity. Substantially all that can be declared novel in this period is the more open and constitutional organization adopted, in name at least, by the seekers after agrarian reform, as contrasted with the secret and revolutionary combinations which, in reference to that object, always hitherto prevailed. There is of course much mere assertion, for which evidence is promised, as to the relation between agitation and crime. Whether the influence of the league or the application of coercion laws is responsible for the astonishing fluctuations in crime which the statistics reveal, is a central point of contention now, as it always has been, between the opposing factions. But one fact stands out beyond question, — and Sir Charles does not fail to present it in its most effective form, — that if professed ends can justify the means, the Land League of 1879 is justified; for practically all its demands of a decade ago are to-day embodied in the statutes of the realm. The counsel's plea in connection with the matter is worth quoting, both as well expressing a pregnant fact and as illustrating the tone of fairness which pervades the whole speech. After quoting a declaration of Mr. Chamberlain that the action of the Land League made possible the remedial measures of 1881 and succeeding years, he says :

And what does that mean? My Lords, it points to a grievous vice in our political system. It does not mean — I have never thought it, I have never said it — it did not mean that honest men who have their attention called to the wretched state of Ireland and who form the representation of Scotland, England and Wales are not anxious according to their view to do their duty; but it means that there is a *vis inertiae* prevailing in the legislature in relation to Irish questions, partly caused by the pressure of, as it is thought, more important concerns, partly from want of information, partly from class interests, partly from prejudice, until it is literally true to say that, go over the last hundred years and trace the story of its remedial legislation, and you will find

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here is hardly one, if there be one, of the measures of that character are to be found on the statute book which has come as a free-will offering legislature and which has not come as the result of agitation, sometimes tutional, sometimes unconstitutional, but always after pressure.

ly four out of the twenty-three chapters in the book are so closely ed to the case proper as to lose interest for the reader who has miharized himself with the evidence. Outside of these and the relating to affairs before 1879, the speech offers the best extant y of the whole Parnell movement from the Parnell standpoint. is a tone of moderation and sweet reasonableness about the ntation which is in winning contrast with the hysterical productions rier writers on the same side. The reader may not be altogether nced that the great Parnellite associations have been unmitigated ngs; he may not be absolutely certain that the Irish leaders were creet as possible in their dealings with the "physical force" element g their followers, but he will feel, on laying down the book, that : choice of leading counsel in the controversy with *The Times* a of practical wisdom was displayed which could have no higher y than the work before him.

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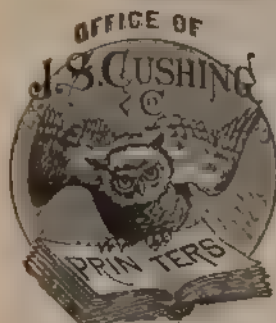
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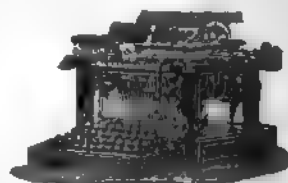
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## NATIONAL SOVEREIGNTY.

THE question whether sovereignty exists in the United States, and, if so, of its location, is one that is equally important and perplexing. Is there a sovereign at all amongst us? Is the sovereignty belonging to it a divided one, existing in the several states? Is it to be found in some form, undivided, in the states united? Or, finally, is the sovereignty in the people of the United States? Other alternatives might be presented, but these are the most familiar. These are also the most profitable topics of discussion. I shall not dwell upon the first question, nor except incidentally upon the second, but what I have to say will be confined mainly to the other two. As a foundation for the discussion of these questions, I shall assume that somewhere in the United States there exists, as fully as in any government, that power which political writers call sovereignty. To locate sovereignty amongst us, on that hypothesis, — *hic labor, hoc opus est*.

The question : Where does sovereignty reside? has arisen in all governments inclined to be liberal or popular, especially during the past century; and it has given rise to two principal schools. The first is that of the "analytical jurists," whose leading authorities in England are Hobbes, Bentham, Austin and Maine, and in our country Mr. John C. Hurd. This school attributes sovereign powers to a person, or combination of persons, forming a part of the people, as organized in a political community. The second school is that which locates sovereignty in the People, — spelled, as Maine sneeringly observes, with a capital P, — that is, in the entire commonwealth, as a

porate unit. To this latter school, as the American adherents of the former admit, belong nearly all the writers, judges and lawyers who have expressed opinions on the subject in the United States. To a full comprehension of these two schools, a brief statement of their origin and history may be necessary. In the early history of nations sovereignty was not associated with a definite portion of the earth's surface. "The fundamental conception was, that the territory belonged to the tribe," which was often a nomadic horde, "and that the sovereign was sovereign of the tribe. The older ideas are reflected in the titles of the earlier monarchs, — *Rex Anglorum, Rex Francorum, Scotorum, etc.*"<sup>1</sup> When the earlier monarchies became transformed by the introduction of feudal principles and by the settlement of the various peoples upon definite domains, the conception of sovereignty was changed by attributing it to the feudal chieftain, or king, conceived as the proprietor of the land and as such possessed of sovereign authority over his feudal vassals. As Maine says: "The feudalization of Europe was not to be completed, before it was possible that sovereignty should be associated with a definite portion of the soil"; and he adds, very significantly, that "in the long run sovereignty came to be associated with the last stage of this process" of feudalization.<sup>2</sup> It is to be noted that the sovereign of the tribe and the sovereign of the territory were both monarchs; the one by virtue of his tribal headship, and the other by virtue of his feudal lordship. Accordingly, in the middle ages and afterwards, the entire conception of sovereignty and of its location in the state was feudal; the monarch was a feudal chieftain, and his subjects, according to feudal principles, were simply tenants or vassals of him of their personal and property rights. Such theocratic monarchies continued to be until the age of revolutions arrived. In the eighteenth century there arose a group of wholly new political conceptions; the pyramid of government, instead of standing on its apex, on a single person or a few persons in the community, was made to rest upon its broad

<sup>1</sup> Muncie, *International Law*, pp. 56, 57; *Ancient Law*, pp. 102, 103.

<sup>2</sup> *International Law, ubi supra.*

foundation, the people; and most modern governments, both at home and abroad, which have been at all influenced by the liberalizing tendencies of the age, have accepted the idea of basing upon the people, more or less completely and directly, the entire system of their political institutions.

Respecting this transformation and its effects, Mr. Maine says:

The states of Europe are now regulated by political institutions answering to the various stages of the transition from the old view that "rulers are presumably wise and good, the rightful rulers and guides of the whole population," to the newer view, that "the ruler is the agent and servant, and the subject the wise and good master, who is obliged to delegate his power to the so-called ruler because, being a multitude, he cannot use it himself." Russia and Turkey are the only European states which completely reject the theory that governments hold their powers by delegation from the community, the word "community" being somewhat vaguely understood, but tending more and more to mean at least the whole of the males of full age living within certain territorial limits. This theory, which is known on the Continent as the theory of national sovereignty, has been fully accepted in France, Italy, Spain, Portugal, Holland, Belgium, Greece and the Scandinavian states. In Germany it has been repeatedly repudiated by the Emperor and his powerful minister, but it is to a very great extent acted upon. England, as is not unusual with her, stands by herself. There is no country in which the newer view of government is more thoroughly applied to practice, but almost all the language of the law and constitution is still accommodated to the older ideas concerning the relation of ruler and subject.<sup>1</sup>

Nevertheless, Mr. Maine accepts, though not without protest against parts of it, the view of sovereignty propounded by the analytical jurist, Austin. He traces that view to Hobbes, to whose idea of sovereignty, he says, Bentham and Austin have made no material addition, and whose method of reasoning he pronounces more scientific than theirs.<sup>2</sup> On the other hand, the writer whose authority has done most to spread the more modern doctrine of national or popular sovereignty (though he was not the first to propound it) is Rousseau. Both Hobbes and Rousseau imagined government to be founded originally in compact, — a

<sup>1</sup> Maine, *Popular Government*, pp. 7, 8.

<sup>2</sup> *Early History of Institutions*, pp. 354-356.

n which has been thoroughly exploded, — but beyond that, in regard to the location of sovereignty and to the powers and functions of government, they were as wide as the poles asunder. Hobbes taught that, government once established and sovereign declared by the consent of the people, absolute power over life and limb, over property and liberty, became vested in the sovereign, or king; while Rousseau imputed sovereignty, with all rightful powers of control, to the people, or nation. According to Hobbes, the compact between people and sovereign was indissoluble for any cause whatever; according to Rousseau, that compact could be dissolved when necessary to protect or to secure the rights of the people.

Now in taking position in respect to these conflicting theories, writers and politicians are naturally more or less governed by their prepossessions. They seek to explain, to justify, to maintain, to discredit or to overthrow the institutions under which they live, to which they are accustomed, and on whose maintenance or subversion depend, as they conceive, their own or their nation's interests. Thus, although the institutions under which the analytical jurists have lived, have of late generally departed in practice, as Maine says, to the doctrine of national sovereignty, those writers have themselves, almost without exception, adhered to the feudal theory ingrained in their instincts at their inception. On the other hand, American writers, impressed doubtless by the theory of their constitution and the constant practice of their governments, teach almost unanimously the doctrine of national sovereignty. There are a few exceptions. Of these the most conspicuous and able is Mr. C. Hurd, who has written a large volume mainly to discredit that doctrine.<sup>1</sup> Following him, Mr. Irving B. Richman lately published an article in the *Atlantic Monthly*, entitled "Law and Political Fact in the United States," taking substantially the same ground as Mr. Hurd.<sup>2</sup> The doctrine propounded by these writers is that sovereignty is a fact, and not a right; that popular sovereignty is not a fact, but a

<sup>1</sup> *The Theory of Our National Existence*.

<sup>2</sup> *Atlantic Monthly*, August, 1889.



fancy, or a metaphysical hypothesis founded on the social compact theory or on the loose phraseology of our constitutions; and that a sovereignty of law or of a constitution, or a sovereignty based on the provisions of either, is an absurdity. It is not important here either to admit or deny the truth of these propositions, which I shall consider briefly further on.

As a basis for the discussion of such of the questions as I intend to consider, I will cite Mr. Austin's definition of sovereignty. He says :

The superiority which is styled sovereignty, and the independent political society which sovereignty implies, is distinguished from other superiority, and from other society, by the following marks or characters :

1. The *bulk* of the given society are in a habit of obedience or submission to a *determinate* and *common* superior, let that common superior be a certain individual person, or a certain body or aggregate of individual persons.

2. That certain individual, or that certain body of individuals, is *not* in a habit of obedience to a determinate human superior. . . .

Or, the notions of sovereignty and independent political society may be expressed concisely thus : If a *determinate* human superior, not in a habit of obedience to a like superior, receive *habitual* obedience from the bulk of a given society, that determinate superior is sovereign in that society, and the society (including the superior) is a society political and independent.<sup>1</sup>

With a proper definition of the word "determinate," little fault could be found with this definition ; and I might add that, with a proper definition of the word "fact," so much insisted upon by Mr. Hurd, the justice of his contention that sovereignty is a "fact," and not a "law" or a "right," may be readily conceded.

On the other hand, the American conception of sovereignty is thus stated by Dr. Lieber :

Sovereignty is the self-sufficient source of all power from which all specific powers are derived. It can dwell, therefore, according to the views of freemen, with society, the nation only.<sup>2</sup>

<sup>1</sup> The Province of Jurisprudence Determined, vol. i, p. 170.

<sup>2</sup> Civil Liberty and Self Government, p. 156. Compare James Wilson, Law Lectures, vol. i, chap. 2.

ere it desirable to rest the whole question upon a single ority or opinion, I should go no further; for of all political writers, entitled to speak for the freemen of the United States, none, probably, carries with him so great weight as Lieber

will be observed that this definition differs from that provided by Austin and his school, mainly in its location of reignty definitely in the nation, which with us can only be the people of the United States; while that of Austin locates it, rather indefinitely, in some "determinate superior," consisting of one person or a combination of persons in the community. Perhaps it may not be important to show that this definition, slightly modified, not in its language, but in its content, would be no less applicable or acceptable here than in feudal monarchies of Europe, but I do not despair of establishing that proposition. Nor will it be at all difficult to demonstrate that the sovereignty of the people, in the American sense, is a *fact*; that it is not a *law* or a *right*; and that, notwithstanding some loose phraseology used occasionally by uncritical statesmen and lawyers, nobody ever supposed it to be a law or a right, though doubtless it is philosophically and actually the basis of law, and is constantly, in its exercise, modified by those practical considerations upon which rest all just views of right. On the two points, that the people, the supposed American sovereign, is *indeterminate* and so not conformable to Austin's notion of a sovereign, and that popular sovereignty is not a reality but a fancy of speculative writers, constitute, so far as I am aware, the principal objections to the doctrine generally received in America, let us briefly consider those points.

### I.

What is meant by a determinate body of persons? Obviously that the individuals constituting it are registered by name and residence, so that one seeking to consult them can readily find them out, nor that they are so few as to be easily numbered

or to be able to meet and act together. In short, it is not meant that the persons composing the sovereign are known as individuals, so that the propriety of their individual action may be passed upon; it is meant only that the body claiming or asserted to be the source of authority may be identified. The persons who make up the body may be many or few; but when the body is recognized as a sovereign body, its individual members are not subject to scrutiny by outsiders, but only by their own associates, as to the validity of their action or the rightfulness of their claim of membership. Hence it clearly does not matter how few or how many individuals constitute the sovereign body. A body consisting of fifty millions of individuals may be as determinate as if it consisted of a thousand or of a hundred persons, or of one person. In fact, the people of the United States, for example, is a more clearly and easily determined body than would be the sovereign placed over us by Mr. Austin. He says:

I believe that the sovereign of each of the states, and also of the larger state arising from the Federal Union, resides in the states' governments, *as forming one aggregate body*; meaning by a state's government, not its ordinary legislature, but the body of its citizens which appoints its ordinary legislature, and which, the Union apart, is properly sovereign therein.<sup>1</sup>

That means that amongst us the state electorates united constitute the sovereign body of each state, considered independently of the Union, as well as that of the Union—a doctrine which would be repudiated as vigorously by our states-rights politicians who preach the doctrine of state sovereignty, as by those public men who believe in the sovereignty of the people of the United States. It may even be claimed that such a complex aggregate is not more but less determinate than the larger single aggregate called the people. Is not the whole more determinate than any aggregate composed of minor aggregates of its various constituents?

But, it will be said, the sovereign of Austin acts as such visibly, and so is more determinate as being recognizable by any one with eyes to see; whereas the sovereign imagined by the

<sup>1</sup> Province of Jurisprudence Determined, vol. i, p. 222.

cates of popular sovereignty, being, according to Mr. Hurd, metaphysical hypothesis generated out of the social-compact "y,"<sup>1</sup> is not visible, and never acts politically at all. It d strike the average American citizen as preposterous to 1 that the people of the United States never acts politically use not every member of that body is a voter, or because every voter goes to the polls. But conceding for the ent purpose that the people acts only indirectly, by opinion by influence exerted upon the electorate or other represen- es of the sovereign, it is nevertheless true that it virtually rns both the states and the Union, and that the action of supposed Austinian sovereign, the state electorates united, ose proceedings in which it seems visibly to exercise sover- powers, only virtually does so. The Austinian sovereign only by a majority, never in fact by its total membership, so the action taken is but virtually that of the entire elec- e; for, as Maine says: "Familiar to us as is the practice of ig the opinion of a majority as the opinion of an entire p, and natural as it seems, nothing can be more artificial."<sup>2</sup> only by a tacit convention, in representative governments, a majority can act for the whole; so that when only a rity has acted it is but virtually the action of the whole. . similar convention, when a majority of the electorate has n a particular action, it is virtually the action of the sover- body to which the acting electors belong. We know this, use when the true sovereign has spoken—at public meet- , by the press or by personal argument or solicitation— electorate, when it acts, either registers the behests of the de or ceases betimes further to represent them. As a nod 1 the master of a vessel to a subordinate is as much an act government as the furling of a sail or the shifting of the 1, so the pressure of public opinion consciously brought to upon the electorate, although inarticulate, is a clear and imate exercise of sovereign power.

r. Maine, describing the qualities necessary to render the

<sup>1</sup> *The Theory of Our National Existence*, p. 114.

<sup>2</sup> *Early History of Institutions*, p. 352.

sovereign determinate, says: "If he is not a single person, he must be a number of persons capable of acting in a corporate or collegiate capacity;" and he adds: "This part of the definition is absolutely necessary, since the sovereign must effect his exertions of power, must issue his orders, by a definite exercise of his will."<sup>1</sup> But "acting in a corporate or collegiate capacity" cannot mean acting as a single body, actually collected together; for however the sovereign may act in other states, the sovereign attributed to us never has so acted and never can so act. Maine's dictum can only mean that its action shall be that of the body, and not that of the individuals composing it; it must be corporate action. The reason given why that is necessary supposes, what certainly is not universally true, that the action of the sovereign body must be taken in writing, or in some form capable of official authentication; and what is not universally true may be universally untrue. As a matter of fact, it is no more true that the ocean cannot rise and sweep away the puny works of man, without formal notice to him, than that the people cannot bring about political changes without the issuance of formal orders.

But suppose that, in order to be determinate — and therefore, according to the definition of Austin, to be sovereign — not only the body as a unit but the individuals composing it must be so, then I say the definition is as applicable to the people as to a sovereign body of one or a few persons. The only difference is that the census in the former case is more difficult to take, as being more extensive than in the latter. Let us remember that the purpose of actually ascertaining the individuals constituting the sovereign must be, not to determine if the voice of the body speaking be that of the sovereign, but merely to verify the citizenship or the right of domicil of such individuals, and that such authentication has no relation to the corporate action of the sovereign body itself; then if, as I have intimated, that body is determinate, all just requisites to the existence of sovereignty, according to the definition of Austin, will have been complied with, so far as relates to the action

<sup>1</sup> Early History of Institutions, p. 351.

the sovereign. In ninety-nine cases in every hundred the will of the nation as the sovereign will be taken through the states' electorates as its ministers. This truth once recognized, the sovereign which virtually appoints or accredits those ministers will be as determinate, for all purposes of ascertainment or verification of its action or of its orders, thought necessary by Mr. Maine, as if those ministers were acting as a sovereign body themselves. In the remaining case, the action of the sovereign will be manifested by some organic movement of the nation, conforming to no rule, but as unmistakable as the wind of a storm at sea.

Perhaps there is no better way to determine which of the two conceptions of sovereignty here presented is the true one, than to ask among the several persons or bodies thought to be entitled to claim that power in the United States, one which will satisfy all the conditions, if possible, of Austin's definition, but which at any rate will stand the test of fact and of history. Bringing into consideration both the Union and the states, it is evident that there can be but the following list of candidates for sovereign honors :

The nation, *i.e.* the people of the United States, acting either *in solido*, or in groups by states.

The Congress of the United States.

The Supreme Court of the United States.

The President of the United States.

The electorates of the states, taken together, in a collective capacity.

The state legislatures, severally considered.

The supreme courts of the several states.

The governors of the several states.

The electorates of the several states.

Now every one of these persons, or bodies of persons, answers, in some degree, the test of determinateness. But Austin's definition requires also certain habits of obedience to the supposed sovereign on the part of the bulk of a community political and independent, and the absence of certain habits of obedience on the part of the supposed sovereign to a determinate human su-

perior. Only one of these nine supposed sovereigns answers both sets of conditions; namely, the first, the nation. Every one of them found within separate state limits, and numbered 6, 7, 8 and 9, whatever may be said of its habitually receiving obedience from the bulk of some political community, certainly yields habitual obedience to the people of the United States, as represented by the various national organs, numbered 2, 3 and 4. These national organs (2, 3 and 4) also, while they severally and in their appointed spheres of action receive habitual obedience from the other six, either as individuals or as organized political bodies, habitually and constantly yield obedience to the nation. Finally, while the individuals who compose the nation, the people of the United States, are amenable to the jurisdiction of their respective state authorities (6, 7, 8 and 9) and to the national organs (2, 3 and 4) yet as an organized political community, free and independent, this body renders habitual obedience to no one of the eight other organs, but controls them all, each of them rendering habitual and ready obedience to it.

Mr. Austin locates sovereignty, amongst us, in the fifth organ described above—an organ imagined by him, but never, probably, by any one but him, to exist for that purpose—“the states’ governments, *as forming one aggregate body*,” which he afterwards explains to be the aggregate of the electorates of the several states. In this aggregate, as he believes, “the sovereignty of each of the states, and also of the larger state arising from the Federal Union, resides.” While, doubtless, as both Maine and Hurd teach, the beliefs and prepossessions of the subject have no decisive bearing on the question of who is, and who is not, his sovereign, they are facts tending to determine the larger fact of the location of sovereignty; and I venture to repeat what I said above, that no one would deny the existence of the Austinian sovereign, or repudiate his authority or jurisdiction, more energetically than our state-sovereignty men. And yet I admit, and maintain, that the aggregate referred to is, from the point of view of the advocates of national sovereignty, among the proximate representatives of that sovereign,

as such charged by it with the exercise of such sovereign powers as bear upon national concerns. I say "among the proximate representatives," because there are others in the several states invested with the exercise of sovereign powers only in local matters relating to the states. From these two classes of proximate representatives, national and state, originate all the remoter ramifications of political functions pertinent to law and history amongst us. But when it is attempted to make the aggregate of the state electorates the sovereign, with all the dread inherent powers conceded to a sovereign by the analytical jurists, or even by those who, with reluctance, deny to it the possession of absolute and irresistible power unlimited by moral considerations,—it is necessary to inquire. Such a sovereign was never known in the United States, nor ever rendered visible by any decisive act of power and original sovereignty or by any claim that it possessed such a power. Besides, while it is true that the supposed aggregate receives habitual obedience from the bulk of the Union,—through the obedience paid to its appointees, the members of the House of Representatives and, remoter still, to the President chosen by electors named by it, and to the senators of the United States, chosen by the legislatures elected by it,—on the other hand, it pays habitual obedience to the nation, and virtually acts whenever that aggregate acts. If it is still doubted that any such action can be attributed to the nation, I can only point to the unofficial action of the people in procuring the selection of a satisfactory person for its chief magistrate. This is done through a voluntary assemblage of citizens, unbidden and unbidden by the governments of either state or nation, called the nominating convention. This body, though a part of the political organism, in placing in the field a winning candidate for the presidency, in fact elects that most important and powerful instrument of sovereign authority. What is it but the direct action of the people? It is easy to call it the expression of the popular preference; but it is more; it is reality, the appointment of the President. The action of the states' electorates, in voting upon that nomination, is but a



registering of a decree previously issued by their master, now standing silent behind them. What would the reputation or the life of a presidential elector be worth who should disregard the mandate received by him as to the person to be elevated to the presidency, and vote contrary to the customary law prevailing in such elections? I do not say that the punishment of a recreant elector by the sovereign of the Union, the people, speaking through public opinion, would be right. It would be an act of sovereignty, a *fact*; and sovereignty is not a right, and its action is neither always morally right, nor productive of right. The waves of the sea do not always respect the barriers set up by man, even though consecrated by time and by solemn conventions. Much of the difficulty attending the conception of popular sovereignty would be obviated, if its opponents would consider that no conditions imposed upon it, as to the mode in which it shall exhibit itself or exercise its powers, are of real validity or efficacy. In our government, the sovereign has allowed the establishment of a certain system by which its multifarious powers are, so to speak, farmed out, in state and nation, to representatives; and what it allows, it enacts. Nevertheless, while it permits the majority of mature males in the several states and in the nation to make laws and constitutions, and to restrict themselves, and even verbally to limit it to certain modes and conditions of political action, yet such restrictions and limitations, powerful and efficacious to govern its subordinates, are but flax in the fire to its sovereign will. It is a most significant circumstance that in the Declaration of Independence, and in our Bills of Rights the sovereign has expressly reserved, for what it deems adequate and just causes, the right of revolution; the right to say to the various functionaries charged by it, or permitted by it, in state and nation, to exercise its sovereign powers: "Master, helmsman, and crew, one and all, go below; I myself now assume command of this ship." As our constitutions recognize this right, although it can hardly be called a constitutional right, that is, a right under the constitution, it is a right *over* the constitution; and perhaps, in the long run, it is the most valuable right reserved to the people, if

would be free. It is in fact the key-note, now heard in so many lands, of the chorus of liberty.

Before leaving this point, I will notice a sneer and a misrepresentation touching the doctrine of the sovereignty of the people uttered by Mr. Hurd in the volume to which I have referred. Affecting to believe that the advocates of the sovereignty of the people attribute sovereignty "to every congeries of thousands or millions as a fact," he jauntily disposes of the doctrine by saying that if that is claimed "as a fact, which is a fact at all times, it is a fact in which I do not take the slightest interest." Supposing this to have been said seriously, in full belief that it fairly presented the doctrine referred to, the proper answer would be that, while the failure of Mr. Hurd to take an interest in an alleged principle of political philosophy, whether well or ill founded, would be a subject of regret to the people of the United States, it could hardly be set up as a competent refutation of that principle. But the truth is, that nobody has ever announced such a principle of sovereignty. Such a conception, whether of a thousand or a million, is not a sovereign community unless it exhibit the other marks of a sovereign; as it be a "society political and independent," and possess and lack the habits above referred to. In international law there is no statute of limitations fixing the number of individuals necessary to constitute such a society; and if it conformed to the definition of a sovereign society, the smallness of its numbers is a matter of no significance in determining its character.

Mr. Richman, in his article in the *Atlantic*, says that to be a sovereign body must be "certain and come-at-able." This phrase adds little to the idea of Austin. To be "certain" is but to have been determined, and to be "come-at-able" can only signify that the sovereign must be visible, and so composed that its members can be easily approached. In no other respect would the supposed sovereign of Austin have any real advantage over the people, which is omnipresent and easily and perfectly reached, by the press, by the action of public meetings and like influences. Indeed, save for a single

purpose, the people, as the sovereign, is just as come-at-able as the sovereign of the analytical jurists,—and that purpose is the bribery of its individual members. We may thank our stars that it is less come-at-able for such a purpose.

Hobbes attributes to the sovereign a quality which, though not specified in Austin's definition, is accepted by many of the school of analytical jurists as involved in the notion of sovereignty; *viz.* that of absolute power as well as of irresistible force. By this is meant that the sovereign, once constituted, can do whatever it pleases, right or wrong. Mr. Maine dissents from this extreme view, contending that while it possesses that power in fact, there are moral limitations to its actual exercise.<sup>1</sup> Subject to this limitation, he locates the irresistible force in the majority of the adult males, meaning doubtless a majority of the electorate, which consists in England as well as here of males twenty-one years of age and upwards. The doctrine of Hobbes, that the sovereign body in fact possesses irresistible force, can be readily accepted if that body be the nation; but to the statement of Maine that that force is located in the majority of the adult males, or of the electorate, serious objection may be made if the statement be intended as one of fact. It is doubtful if it would be true were that force attributed to the entire electorate. Thus, taking the census of 1880, the male population of the United States was twenty-five and a half millions, in round numbers, of which the males twenty-one years of age and over, of all classes, including Chinese, Japanese and Indians, were but a little above twelve and three-quarter millions. To the male population of non-voting age, of nearly equal numbers, add the female population of over twenty-four and a half millions, and it would be rash to say that the total of over thirty-seven and a quarter millions were not equal in physical force to the twelve and three-quarter millions of voters. But that does not express the true conditions of the problem. We have imagined the majority of the electorate to have no counteracting minority. In fact, it might be a majority of one, or consist of any number exceeding the minority; and, as ex-

<sup>1</sup> Early History of Institutions, pp. 357-359.

ence shows, it would never be likely very much to exceed. Suppose it to be a majority of two to one; add one-third of electorate, over four and a quarter millions, to the thirty-n and a quarter millions of non-voters, as much a part of sovereign body as the electorate, — and the irresistible force *laine* would have to be looked for in the eight and a half ons of the majority. Imagine this electoral majority pitted 1st more than forty-one and a half millions, comprising the al minority and its allies, and it would not be difficult to ict the result of a contest. If we suppose the voting rity to be nearly counterpoised by the voting minority, as ry frequently is, its irresistible force would be even more inary. It is not necessary, however, to pursue this line of ght further. That the nation, the people, is superior in ight and in endurance to any part of itself, is, I take it, both thematical and a sociological truth.

## II.

re second point made by the analytical jurists and their few rican followers is that the sovereignty of the people is not t, but a "metaphysical hypothesis."

hat is a fact? Mr. Hurd says it is "a thing known by the rving intellect, aided by the bodily senses, whether in the ment of the moral sense it ought to exist or not"; and he describes his method of proceeding to discover that fact, or sovereign, in our government:

ave conducted my inquiry [he says] on the supposition that the nce of a nation as a political being may be known by generalizing n actual events, regarded as exhibitions of political force or energy, hands of some actually existing human beings; which events are accepted as facts, because nobody can help accepting them as

might be content to rest the argument for national sover- y upon inquiries conducted upon this principle and after

this method. Let the "observing intellect aided by the bodily senses" look at the history and operation of political forces in the United States for the last thirty years, and say if it does not discern the presence and activity of a prodigious power, not proceeding from, nor always even directed by, presidents, governors, congresses or legislatures, nor by the favorite figment to which Austin attributes the sovereignty of the states and of the Union, the aggregate of the state electorates — a power which, in its unity and immensity, bespeaks the existence of an American nation? Did that timid, halting and largely traitorous aggregate rise against secession in 1861? Were the reluctant state governments spurred by it to patriotic activity? Did it fill the ranks of our armies, time after time, in spite of disloyal governors and parties, with soldiers full of an immense enthusiasm, caught, not from Union officials, not even from President Lincoln, but from the American people, — an enthusiasm kindled by unnamed men, women and children, who loved their country, who were ready to die and, what is more, to suffer, that both the slave and the white man might be free? Is there nothing in such a spectacle for the bodily senses to take cognizance of as a fact? Is there nothing there to beget in "the observing intellect" the suspicion that in that majestic aggregate known as the people, whose rising and movement it was, there was something more than a "metaphysical hypothesis, generated out of the social-compact theory"? And generalizing the actual events of the great uprising and of the ensuing war, "regarded as exhibitions of political force or energy," — must it not be admitted that those exhibitions were "in the hands of actually existing human beings"; and that those "events are to be accepted as facts because nobody can help accepting them as such"? If it has not been the American nation that has forced its way to the greatness and glory it now exhibits, while its affairs have, verbally and to the dull eye of the reactionary theorist, been conducted only by the dickering politicians who have too generally filled our public offices, — who has done it? It certainly was not the office-holders who carried on the war for the Union, nor was it they who conducted

even greater work of civilizing, educating and christianizing country. Has this work been even aided, save in the single instance of education, by state or national officials? If it be that this work is largely an exhibition of merely moral force; and not of the "political force or energy" contemplated in the definition, I ask if a source of such immense political force, ripening into so unprecedented an exhibition of military force, not on the part of our governments, but of those who fight our battles, the rank and file of the Union armies—if this source is not to be accounted a sovereign body, simply because it has exhibited also unprecedented moral force or energy?

It would be easy, did space suffice, to multiply examples of force or energy distinctly political, exhibited by the American people. But it is the less necessary, as Mr. Maine himself substantially admits all that is needful to establish the point I contend for, that the people is in reality the sovereign. Criticising in his immediate school for neglecting certain conditions which in effect determine "how the sovereign shall exercise and forbear from exercising his irresistible coercive power," he says: "It is its history, the entire mass of its historical precedents, which in each community determines" how it shall exercise and forbear; and he adds: "All that constitutes this—the enormous aggregate of opinions, sentiments, beliefs, traditions, and prejudices, of ideas of all kinds, hereditary or acquired, some produced by institutions, and some by the constitution of human nature—is rejected by the analytical method."<sup>1</sup> While in this passage Mr. Maine doubtless does not order these exhibitions of influence to be an exercise of sovereignty, he yet admits that they are so powerful as to determine how sovereignty shall, and how it shall not, be exercised. Obviously, if there is a vast body of influences, no matter of what kind, moral or physical, at work back of the Austinian aggregate, influences sufficiently powerful to determine both its action and its failure or neglect to act,—the source of these influences must be the sovereign; and it is not even verbally

<sup>1</sup> *Essays in Comparative Jurisprudence*, pp. 359, 360.

true, according to Austin's definition, that that aggregate is possessed of sovereignty.

Thus far I have accepted Mr. Hurd's definition of a fact. The same result would follow were I to propound that of the lexicographer Worcester: "That which is, or which exists; a reality; a thing done; an act." While etymologically the word "fact" means, of course, "a thing done," and so refers primarily to some act cognizable by the bodily senses, yet when used in political discussion, as here, to indicate the antithesis of a speculative dogma, hypothesis or opinion, and especially when used to characterize a power, it means, as Worcester defines it, a "reality," a thing "which really exists." Now, I maintain that not a single circumstance tending to characterize sovereignty as a reality, a power actually existing in a sovereign like that placed over us by Austin, is lacking in the sovereign contended for by American writers, the nation or people of the United States. Of course, from the nature of the case, the power itself is not directly cognizable by the bodily senses; it is only its political effects that are visible. Tested by that principle, it must be plain to "the observing intellect, aided by the bodily senses," that, without the people standing back of the skeleton suspended before us by Austin and announced as our sovereign, — without the people, to teach, to stimulate, to guide, to correct, and to punish, — this complex machine of government would have gone to ruin a hundred years ago, and a hundred times since then. We are justified, therefore, in believing the nation, the People spelled with a capital P, to be a fact; in believing it to possess, if any person or any body of persons amongst us possesses them, all the powers rightfully attributed by political writers to a sovereign.

As it is important to leave, if possible, no room for doubt upon the question, whether national sovereignty is a mere metaphysical hypothesis, or a reality, a *fact*, exhibited by a political aggregate capable of dictating constitutions, of directing the administration of government, and of wielding its sovereign powers readily and effectively, let us listen to Mr. Herbert Spencer's views of the subject. After remarking how prone we

do not forget the ultimate while thinking of the proximate, as in relation to the common origin of structures as to the common source of their powers, Mr. Spencer says :

Though the habit, general in past times, of regarding the powers of governments as inherent, has been, by the growth of popular institutions, in great degree qualified ; yet, even now, there is no clear apprehension of the fact that governments are not themselves powerful, but are the instruments of a power. This power existed before governments arose ; governments were themselves produced by it ; and it ever continues to act through them, though disguised more or less completely, works through them. That which, from hour to hour, in every country governed despotically or otherwise, produces the obedience making political action possible, is the accumulated and organized sentiment felt towards established institutions made sacred by tradition. Hence it is undeniable that, taken in its widest acceptation, the feeling of the community is the source of political power ; in those communities, at least, which are free from foreign domination. It was so at the outset of social life, and continues substantially so.<sup>1</sup>

It might be objected that the doctrine of national sovereignty leaves the citizen at a loss to determine whether the action he witnesses be that of the nation or of a mob, the answer is that the power of the sovereign ought to be exercised in accordance with the established laws of morality ; that if, in the judgment of the individual, that which he witnesses is opposed, either in principle or mode, its principles or its probable effects, to those laws or to the interests of the community, his duty is plain ; that he should look upon the action taken or proposed as perhaps unwarranted — as possibly not that of the sovereign — and to oppose it to himself with those who for that reason oppose it. To do this it is not the sovereign who speaks, but a faction. In the citizen, promptness to estimate the character and consequences of political action, and alertness to oppose it if wrong or unconstitutional, are the qualities most needful in the citizen of a free state.

Happily, however, most acts supposed to be those of the sovereign would be rather the acts of its representatives, and, if they are wrong, would be presumed to be unauthorized by the sovereign. To procure their reversal or repeal would require

<sup>1</sup> Principles of Sociology, vol. ii, part v, chap. 5, secs. 466, 469.



only the ordinary exercise of the political power wielded by the citizen.

It is not probable that this presentation of the doctrine of national sovereignty, or any other that could be made, will be acceptable to the advocates of the feudal theory. But it is in harmony with American traditions; it expresses the ineradicable purpose of our people to keep themselves, in the future as in the past, relieved from the dangerous implications of the feudal theory, and to withstand its introduction into America; and no theory of sovereignty but that of the people as a whole is in harmony with the facts of American political life. So far the American theory has worked well. It promises equally well for the future; and if for any reason it be thought to be less scientific or less consistent with abstract political theory than that of Austin, so much the worse for abstract political theory. It is the American doctrine of sovereignty, and not the European.

JOHN A. JAMESON.

## THE COMPTROLLERS AND THE COURTS.

WHAT may be termed the accounting department of the

United States government consists of seven auditors, comptrollers and one register. Six of the auditors are such in name as well as in reality, and are distinguished from each other by numerals, as first, second, *etc.* But the commissioner of the general land office is also an auditor, though not so designated. In the same way there are but two comptrollers by name in the accounting department -- the first and the second. It should not be mentioned that the comptroller of the currency takes no part in the settlement of public claims and accounts. The other two, who are comptrollers in fact, though not in name, are the commissioner of customs and the sixth auditor. Contrary to general belief, the numerals which are used to distinguish the comptrollers do not indicate any difference in rank or in power. The first comptroller, indeed, decides appeals from the decisions of the auditor; but the commissioner of customs and the second comptroller are entirely co-ordinate with the first. We have had but one comptroller ever since the Treasury department was organized in 1789. The second was added in 1817. The first auditor dates from 1836; and the commissioner of customs was introduced in 1849, to relieve the first comptroller of the burden of a branch of public business which had grown up and become very great.

When the committee of the first Congress reported the Treasury bill, which provided, among other things, for the re-organization of the department now under consideration, Mr. Madison urged that individuals having claims and accounts determined upon by the comptroller should be permitted to petition the Supreme Court for redress, and that the court should be empowered to do right therein.<sup>1</sup> This suggestion, however, was not heeded, and a people professing to hate tyranny placed

<sup>1</sup>Annals of Congress, June, 1789, p. 612.

in power then and there an officer who, within a limited field, was absolute. He was not required to conform to the directions of those superior to him in rank. He was not amenable to the courts. He was beyond the reach even of a *mandamus*; for in all cases of payment of money he was supposed to exercise "discretion."<sup>1</sup> From his decision adverse to a claimant, there was no appeal except to Congress. The laws of the first Congress meant to give him the last word respecting the payment of claims upon the government.

In other departments, established contemporaneously with the Treasury, the secretaries were authorized to give the word of command to all subordinates concerning every matter within their respective jurisdictions. But the comptroller was designed to be a check upon his secretary. The secretary of War or the secretary of State may appoint, said Congress, "assistants to be employed . . . as he shall deem proper." The comptroller's duties, however, were definitely pointed out by statute. He was to see to it, among other things, that the orders given by the secretary of the Treasury for the payment of public money were "warranted by law."<sup>2</sup> He had been referred to in the debate of 1789 as an "independent officer," and of this independence he was never robbed. Attorney-General Wirt declared in an official opinion in 1823 that his decisions were not to be disturbed by the President himself. "My opinion is," he said, "that the settlement made of the accounts of individuals by the accounting officers appointed by law is final and conclusive, so far as the executive department of the government is concerned."<sup>3</sup> The soundness of this opinion was never disproved, though the question it was supposed to put at rest arose again and again. Almost every attorney-general was called upon to review it, and its discussion continued until nobody knew what relation really existed between the account-

<sup>1</sup> See *Decatur vs. Paulding*, 14 Peters, 497; *Reeside vs. Walker*, 11 Howard, 272; *U. S. vs. Guthrie*, 17 Howard, 284.

<sup>2</sup> Compare 1 Statutes at Large, p. 65, with pp. 28 and 49, 50; see also Lodge's *Hamilton*, VII, 107, 108. Cf. Attorney-General Cushing's distinction between accounting officers and ordinary bureau officers, 6 Opinions of Attorney-Generals, 329.

<sup>3</sup> 1 Opinions, 624.

officers and the heads of department.<sup>1</sup> But the comptroller with Wirt's opinion spread before them, appear to have been the tranquil masters of the situation. Finally, in 1868, Congress ended the memorable and somewhat unseemly dispute sustaining Wirt's position, though at the same time giving secretaries the right to demand in certain cases a reconsideration by the comptroller and, that not proving satisfactory, to submit the controverted question to the courts.<sup>2</sup>

After 1797, and until the Court of Claims was established, the only way in which any one having a claim against the government could obtain a judicial consideration of its merits was by giving himself sued by the United States. He could then, under certain restrictions,<sup>3</sup> plead his claim so as to reduce or extinguish that of the government against him. He was not allowed to present, however, for any balance in his favor. This privilege to sue the government was considered as an appeal from the comptroller to the courts. Fortunate was the disbursing officer or other official who could force the United States to sue him! Those who, while not indebted to the government, nevertheless had claims against it, had no redress after the rejection of their demands by the comptroller, but by petition to Congress.<sup>4</sup> This reluctance on the part of the government to throw open the doors of its courts to such complainants, resulted in distinct and serious evils:

*First.* The executive officers charged with the adjudication of such cases were placed in a position both false and cruel. As a rule, the aid afforded by argument of counsel, and even of the poor privilege of seeing the claimants and witnesses face to face, with few or no judicial precedents

concerning this "civil question," see Attorney-General Crittenden, 5 Opinions, 17; and as to the "fluctuation of opinion" thereon, Attorney-General Cushing, 1 Opinions, 464, 468, 297, 298.

<sup>2</sup> Revised Statutes, sections 191 and 1063.

<sup>3</sup> For example, proof of prior submission of the demand to the accounting officers and its rejection by them.

<sup>4</sup> It was no unusual thing for a person found a debtor by the rules of evidence governing the accounting officers to request that he might be sued for the sum balance, that he might have the benefit of the more liberal rules of evidence prevailing in courts of law. Wirt, 1 Opinions, 599.

to guide them, and burdened with vast and pressing routine duties, they dismissed, doubtless, many a deserving claimant, adopted many a narrow practice and pursued many a harsh method. Owing to no grave fault, perhaps, of their own, but to the friction and defects of the ill-constructed system of which they formed a part, they incurred from time to time the sneers of the cabinet, the reproaches of the courts and the anathemas of suitors. Though a way is now open for claimants who may consider themselves aggrieved by the comptroller's decision to sue in the courts; though heads of departments, dissatisfied with his rulings upon matters connected with their expenditures, have ample power to demand a judicial determination of a question in controversy; and though judgments of this executive tribunal have become more enlightened and equitable by reason of the great body of departmental precedents laid down in accessible form in recent times; yet the suspicion of narrowness, arrogance and arbitrariness in this office has unfortunately lingered in the public mind long after the conditions which fostered such traits have been removed. This evil needs no comment. Public confidence in his integrity, impartiality and intelligence is as important to a comptroller as it is to a judge. He is in many respects a judicial officer. Personally, the comptrollers of the Treasury have usually been men of high character and attainments, in disposition conservative and just. Officially, they have been, until recent times, irresponsible, unmanageable and despotic.

*Second.* An immense encouragement was given to the misappropriation of public moneys. Officers who were conscious of deserving the credits for which they had vainly applied and who were laboring under old and apparently technical balances piled up against them at the Treasury, boldly recouped themselves from sums in their possession clearly belonging to the government, and dared a suit. The opening of a court before which such persons can establish their right to sums that accounting officers might not be disposed to allow, has been, it may be conjectured, an absolute benefit in a pecuniary sense to the government. On the 4th of March, 1853, the in-coming

retary found on the Treasury books debts due to the government amounting to over one hundred and thirty millions of dollars.<sup>1</sup> He informed Congress that a strict examination into origin and history of this large balance made it manifest that the public money had been devoted to private use and allowed to remain unaccounted for until, in many cases, the parties became insolvent; and that these parties, in order to cover sums wasted and lost by private use, set up *unfounded claims for credits and services*.<sup>2</sup>

It is true that the greatest difficulty, in the early days, in the want of proper control of those charged with the disbursement of public moneys was to get them to make any report at all to the Treasury officials of their receipts and expenditures. Mr. Ariel Duval, the comptroller in 1802, speaks of Mr. Sitgreaves, commissioner under the treaty of 1794, as one of those who thought it could not be expected that accounts and vouchers should be kept or rendered "for the numberless items of detail which enter into the expenses of a gentleman abroad."<sup>3</sup> There were many who, scenting danger from afar, did not wish to have anything to do with the comptroller. The early statute books are filled with laws designed to compel these officers to come in and settle. But the great bar to speedy settlements was not so much the negligence or speculation of revenue officers as the disinclination of the comptrollers to bring suit. On account of the expense involved, an action was never brought against a public debtor in the first years of our history unless some very strong circumstances seemed to warrant such a course. And moreover juries were very likely to attach more importance than did the comptroller to these unfounded claims for credits and services." Public accounts were in a wretched state. "Old Balances" rose up to fret and enrage each successive Congress. Committee after committee visited the Treasury and submitted reports upon the

See Finance Report for 1855-6, pp. 35, 36. It should be added that the secretary, Mr. Guthrie, by earnest and systematic labor, cleared the books of over one hundred millions of this debt.

<sup>2</sup> *Ibid.* p. 40.

American State Papers (Finance), vol. ii, p. 416.

matter. The remedy granted in each case was an increase of the power of the comptroller. The first law, that of 1795, permitted him to summon the debtor and demand from him reasons why the charges made against him should not stand. If this process was ignored, penalties were added. In 1820 the comptroller was authorized to send his judgments to the proper marshal for execution. The debtor who refused to pay upon presentation of such a warrant was stripped of his property or cast into jail.<sup>1</sup> In 1809 a species of blackmailing, as it seems in retrospect, was resorted to in order to encourage prompt settlements. The comptroller was required to transmit annually to Congress statements of unpaid accounts. This requirement was made even more rigid in 1817. In 1828 the comptroller was authorized to withhold from those in arrears any compensation that might be due to them. When it is remembered that during this time almost all officers were compensated by fees, which they themselves collected and retained; that there were no clear rules established concerning pay for extra services and concerning double salaries for performing the duties of two posts; and that the comptroller, by a mere *ipse dixit*, declared what belonged to the Treasury and what to the officer; it is not astonishing that many good men were classed as defaulters and that the ranks of the rogues increased. Real delinquency found concealment and countenance in the number and amount of those unsettled balances.<sup>2</sup>

*Third.* The true state of the Treasury books was concealed from the people. The comptrollers, in obedience to the early laws which have been mentioned, sent to Congress every balance that appeared upon the register's ledgers. It was soon discovered that many of these involved the names of illustrious citizens, who had been honored with the highest offices. Explanations being demanded, it was ascertained that in some

<sup>1</sup> For incredible harshness in the operation of this law, see *Ex parte* Randolph, 2 Brock, C. C. Rep. 447.

<sup>2</sup> See Mr. Quincy's Report to House of Representatives, American State Papers (Finance), vol. ii, p. 415.

as the balances indicated money actually due, while in others amounts and vouchers yet to be acted upon would reduce and probably remove the published indebtedness. But there was and in addition a third class, namely, that of claims upon which the accounting officers did not feel at liberty under existing laws to decide. Points of a doubtful nature were involved; and though the claimants were pressing for a final settlement, the Treasury officials simply charged them with the money retained and claimed by them, refusing either to determine the title absolutely themselves or to assume the burden of expense of testing it judicially in court. The debt was simply charged. Collection was another matter.

The committees who reported to the House of Representatives in 1810 and in 1816 saw clearly that these Treasury statements not only circulated injurious suspicions against honest men, but also, by reason of this want of discrimination, finished the odium and contempt which defaulters and embezzlers would otherwise have experienced. As early as 1806 it was suggested in Congress that some mode should be adopted for disposing of disputed claims of revenue officers and others who could not obtain a proper hearing at the Treasury. It was urged that some tribunal should be established "which might pass them in review and decide finally upon them, or report them with their opinion to the House for ultimate decision."<sup>1</sup> This was done in 1855, when the Court of Claims was established. But in the meantime, year after year, honest men, as well as dishonest defaulters, were published to the world in company with precious rascals and "held up to the public under at least the appearance of having committed like frauds upon the government." Necessarily the real state of affairs could not even be guessed.

In 1860 the practice of sending these lists of debtors to Congress stopped short, nobody knows why.<sup>2</sup> The Senate in 1876 ordered and obtained a statement of those balances which, having arisen since 1830, were due from public officers no longer in

<sup>1</sup> See *Am. State Papers (Finance)*, vol. ii, p. 415; vol. iii, p. 123.

<sup>2</sup> *Finance Report for 1881*, p. 331.



the service; but it was not ordered to be printed.<sup>1</sup> In 1885 the register of the Treasury published the balances which appeared on his books. He gave both sides of the ledger. His purpose was good, his industry commendable. But again the feelings of honest and honorable men were pained, because, though the balances charged to them were of the sort styled "nominal" or were absolutely inaccurate, yet there was nothing in the publication to distinguish these from those which represented actual defalcation.

The difference between the condition of public officers who nowadays have claims against the Treasury and that of the same class who were in the service earlier, is made very plain by a remark of Judge Weldon of the Court of Claims in the recent decision in the *Mosby* case:

Public officers are not bound, in order to save their rights, to place themselves in antagonism to the accounting officers of the department, suffer themselves to be sued, and incur the odium, for the time, of being in default; but have the right to pay into the Treasury the disputed moneys, and then seek the courts to adjust and determine their claims against their superior and sovereign.

But before 1863, when the Court of Claims was made a real judicial tribunal, public officers, in order to establish their right to a disputed fee, had either to retain the money and run the risk of a suit brought against them, or to pay it into the Treasury with small hope of ever regaining it. It is easy to see how the most of them, relying on the maxim "*melior est conditio possidentis*," would hold all such fees, incur the charges of the accounting officers, and yet never, for obvious reasons, be summoned to court to prove property. The charges, however, went on the books. Many of them are there yet. The books and the balances which they show have thus been unfortunately discredited, and the people, not knowing how to interpret them, are kept in ignorance of the whole subject. Though sound policy would require full publicity as to who are really indebted to the government, the revelations of "Old Balances" have been so obscure, so misleading, and in some instances so false

<sup>1</sup> Finance Report for 1884, p. 269.

calumnious, that silence in this respect is golden. "Old ances" attained their most lusty growth under the theory that registers duly registered and published would be an acceptable substitute for the judgments or decrees of a court.

*Fourth.* When the only hope of those who could not get amounts or claims through the Treasury was in Congress, the power of the lobby was at its height. Judge Richardson, of the Court of Claims, has well described the difficulties under which committees of Congress labored in the trial of the facts presented to them by numerous and importunate public creditors. "cases were presented *ex parte*, supported by affidavits.

in that day, it is to be feared that the claimants' main reliance, to quote Judge Richardson, was upon "the influence of such friends as they could induce to appear before the committees in open session or to see the members in private."<sup>1</sup> The lobby is by no means extinct in these latter days; but far fewer ordinary claimants have occasion "to see" members of Congress "in private."

There is much in this review to encourage those who long for a government of laws as distinguished from a government of men. We now have not only an accounting department, but a court. Any one having a claim or an account against the government may elect his tribunal. If he chooses the comptroller, he may appeal from an adverse decision to the court. Claimants remote from Washington, the district and circuit courts of the United States are now open; for by a recent law we have been made so many courts of claims.<sup>2</sup> Indeed, even those who as principals, sureties or personal representatives stand charged with old balances, with no claim whatever to present as set-off, may petition the Court of Claims for correction of the account.<sup>3</sup>

The comptrollers are now brought into close contact with the courts. Not only do they shape their course by judicial decisions, overturning, it may be, old departmental practices, but,

Hist. rev., *et al.*, of the Court of Claims, in preface to 17 Court of Claims Reports.

<sup>2</sup> Act of March 3, 1887, 24 Statutes at Large, 505.

<sup>3</sup> *Ibid.*

under permission of the law, they apply directly to the court for advice in cases involving controverted questions of law or of fact. There is now no excuse for those who refuse to pay into the Treasury the sums for which the comptrollers hold them accountable. Such sums, after deposit, may be recovered through an orderly and inexpensive proceeding in court. Knowing that such proceedings may be instituted, comptrollers are not so apt to make arbitrary and partial decisions as they were when those accounting to them had no appeal save to a committee of Congress, already deafened and perplexed by crowds of petitioners. This subordination to the judiciary, and the formulation of principles through numerous decisions of the Court of Claims and the Supreme Court since 1863, far from weakening the comptrollers, have added much strength to their position and have greatly expanded the true field of their usefulness.

E. I. RENICK.

## THE LEGISLATURES AND THE COURTS:

### THE POWER TO DECLARE STATUTES UNCONSTITUTIONAL.

WHEN the question of the adoption of the constitution of 1787 was under discussion in the Virginia convention, Patrick Henry declared that he took it as the highest encomium of his country, that the acts of the legislature, if unconstitutional, were liable to be opposed by the judiciary. This power which the courts disregard the acts of the legislature and declare them null and void because contrary to the supreme of the constitution has been a source of endless wonder to foreign students of our system of government. "No feature in government of the United States," says Professor Bryce, "is awakened so much curiosity in the European mind, caused much discussion, received so much admiration and been so frequently misunderstood, than the duties assigned to the Supreme Court and the functions which it discharges in guarding the ark of the Constitution."<sup>1</sup>

In speaking of this subject Sir Henry Maine says,

"The success of this experiment has blinded men to its novelty. There is no exact precedent for it either in the ancient or in the modern world. The builders of constitutions have of course foreseen the violation of constitutional rules, but they have generally sought for an effective remedy not in the civil but in the criminal law, through the punishment of the offender; and in popular government, fear or jealousy of an authority not directly delegated by the people has too often added the difficulty to be left for settlement to chance or to the arbitrament of arms."<sup>2</sup>

American Commonwealth, I, 237. See Brougham's Political Philosophy, III,

As an illustration of this admiration and misunderstanding, I quote the following from Prof. F. L. Herbert Rogers' recent work, *The Economic Interpretation of History*, 344: "The American constitution even protects its citizens against legislation which is asserted to be, at least, for the Supreme Court can on appeal reverse any act of the federal legislature which it declares to be unconstitutional." Popular Government, p. 218.

While the doctrine can exist only in a government where there is a division of powers and a written constitution, it is not, as is often asserted, the necessary outgrowth of such a system. There are many nations now living under written constitutions, but this power seems to be confined exclusively to the American courts. The question has been much discussed by jurists in Germany and Switzerland, and while there are not wanting those who claim the power for certain courts in both these countries, the current of theory and practice is the other way. In Spain the supreme judicial tribunal may try cabinet ministers, but cannot set aside a royal decree. In France the Court of Cassation cannot question the validity of a law which has passed the Senate and the Chamber of Deputies. In Germany a law passed by the Federal Council and the Imperial Diet is beyond the reach of the Imperial Court. In Switzerland the supreme federal judicial power is vested in the Federal Tribunal, the members of which are appointed by the federal legislature. Under the constitution of 1848 there was an appeal on questions of public law to the Federal Council, from which there was a further appeal to the Federal Assembly. If the two chambers agreed, the decision was final; but if they disagreed, the decision of the Federal Council prevailed. This system was found unsatisfactory, as a large part of the time of the chambers was occupied in the discussion of mixed questions of law and politics. When the constitution of 1874 was adopted, this was in a measure remedied by providing for an appeal to the Federal Tribunal, which now has appellate jurisdiction over (1) conflicts of competency between federal and cantonal authorities; (2) disputes between cantons involving questions of public law; (3) certain claims for violation of rights of citizenship; (4) federal laws passed in execution of the federal constitution; (5) claims for violation of concordats between cantons and treaties with foreign countries.<sup>1</sup> Generally, if a cantonal law violates the federal constitution or a federal law, the Federal Tribunal will declare it invalid,<sup>2</sup> but in some cases recourse

<sup>1</sup> Adams and Cunningham, *The Swiss Confederation*, 73, 260.

<sup>2</sup> Jellinek, *Gesetz und Verordnung*, 401.

to be had to the Federal Council. The federal legislature is the sole judge of its own powers, and the courts must receive every law passed by it even though it violates the constitution.<sup>1</sup> All such laws are adopted by the people either directly or through the *referendum*, and the judiciary must submit their judgment on constitutional questions to the will of the people.

The jurists of Belgium maintain, in theory, that an act of government opposed to the constitution should be disregarded by the courts; but during almost sixty years of Belgian independence the power does not appear to have been exercised.<sup>2</sup> The liberal statesmen have preferred to trust to the efficacy of declarations of rights and the restraining power of public opinion, rather than permit the courts to pass upon political questions. By such means they have attempted to confine legislative power within very narrow limits, without making any provision for rendering unconstitutional legislation of no effect. The germ of the principle established in American constitutional law is found in the English law. The judiciary is an offshoot from the executive; it developed slowly from absolute dependence to comparative independence. Montesquieu, who found his ideal in the English constitution, appreciated the subordinate position of the judiciary as compared with the executive and legislature, remarking that "of the three powers here mentioned, the judiciary is in some measure next to nothing." Lord Bacon advised his ideal judge to consult with the king and the state, "to remember that Solomon's throne was supported with lions on both sides. Let them [the judges] be lions, but lions under the throne, circumspect that they do not check or oppose any points of sovereignty."<sup>3</sup>

The English people worked out their freedom through this subordinate judiciary. And while there were many instances of corrupt and subservient courts, the contests maintained by

<sup>1</sup> Dubs, *Das öffentliche Recht der schweizerischen Eidgenossenschaft*. (Zurich, 1885).  
<sup>2</sup> Soklan, *Du recours de droit public au Tribunal Fédéral. Supplément du Journal des Tribunaux* (Bâle, 1886).

<sup>3</sup> See Girou, *Le droit public de la Belgique*, pp. 129-158.  
<sup>4</sup> Essay of Jurisprudence.

the judges with the crown form some of the brightest chapters in English history. It required the loftiest courage to balance the scales of justice between the crown and the people. The judges were dependent for their offices upon the pleasure of a king whose prerogative was vague and uncertain. It was difficult to reconcile the acts of a tyrannical monarch with the principle that the king could do no wrong; yet this principle was the means by which the power of the courts was so extended as to permit them to inquire into the validity of acts of the government. As the king could not be presumed to have commanded a violation of law, an illegal act was treated as the act of a minister, who was not allowed to plead the command of the king in bar. Thus the violation of law was punished, and the dignity of the crown preserved.<sup>1</sup> The struggle between the crown and the people seeking in the courts a remedy for arbitrary violations of law was long and bitter, and ended only with the revolution of 1688, which definitely limited the royal prerogative. In 1769, Wilkes obtained a verdict of four thousand pounds against Lord Halifax, secretary of State, for illegally issuing a general warrant under which the plaintiff was arrested, his house searched and his papers seized.<sup>2</sup> It was through this course that the judiciary ascended to the level of the executive, and thus established a practical and effective check upon the arbitrary acts of the crown. But from the nature of the government no such control could be obtained over the legislature. A legislative act, being the joint act of crown, lords and commons, was a sovereign act and beyond control. A few eminent judges have, indeed, claimed for the English courts power to limit this absolute supremacy of Parliament, but it was never generally admitted and is inconsistent with the theory of the British constitution.<sup>3</sup> It remained for the colonists to carry the principle of judicial control further and apply it to legislative as well as to executive acts.

<sup>1</sup> Hare's Constitutional Law, I, 136. For an analogous principle in reference to American commonwealths, see *Poindexter vs. Greenhow*, 114 U. S. 290.

<sup>2</sup> See *Wilkes vs. Wood*, 19 State Trials, 1153; *Entinck vs. Carrington*, 19 State Trials, 1029. Cf. *Boyd vs. U. S.*, 116 U. S. 616, 626.

<sup>3</sup> Coke declared: "The Common Law doth control acts of Parliament and adjudge

## II.

the colonists received their legal system from the mother country and with it the same general ideas of the powers and uses of the courts. When they came to lay the foundation on which to build new governments, they did not break with the past, but adopted a judicious course of selection and elimination. That this was in a measure involuntary is evident from the fact that while they "talked like rank democrats, they acted like progressive Englishmen." They were familiar with the constitutional system of the mother country and with the history of the long years of struggle and conflict out of which it had been evolved. They had no faith in the theory that a new system of government could be ordered like a new suit of clothes. They would as soon have thought of ordering a "new man of flesh and skin." "They had," says Mr. Bryce, "neither the rashness nor the capacity for constructing a constitution *à priori*." As Lowell eloquently puts it: "They knew that it is on the roaring loom of time that the stuff is woven for the new vesture of their thoughts and expressions as they were creating." They reproduced, as far as was consistent with the circumstances, what they conceived to be the English constitutional system. In the texture of their minds they were Englishmen, perfectly satisfied with the English system of gov-

when against common right to be void." *Dr. Bonham's Case*, 8 Rep. 114. Chief Justice Hobart declared, that an act of Parliament is void, if against natural equity. Hobart's Reports, 14. Lord Mansfield, when solicitor-general, argued the common law that works itself pure by rules drawn from the fountain of justice, for this reason superior to an act of Parliament. 1 Atk. 33. But such doctrines were not kindly received by Parliament. Sir Thomas More was beheaded, thinking in private that there were some things Parliament could not do: for example, no Parliament could make a law that God should not be God; no Parliament could make the King the supreme head of the church." There is an inward way in which the courts limit the effect of Parliament's omnipotence. A court of equity may restrain a party from applying to Parliament for private legislation where such legislation would be unjust. It will not permit parties to make a false use of the right of petition. This jurisdiction is deduced from the aspect of the party's presumed to be under not to prefer a petition. See remarks of Cotton in *Stockton, etc. Ry. Co. vs. Leeds, etc. Ry. Co.*, 2 Phill. 670. Essay on Democracy.



ernment and imbued with English ideas, but driven into nation-building by the acts of a misguided Parliament. They were not rebelling against English law but against English statesmen.<sup>1</sup> Hence in the system of government finally adopted, the great principles of English freedom were carefully preserved. There was no intention of abandoning Magna Charta, the acts of the Long Parliament and the Declaration of Rights. The principles preserved in these instruments were merely carried one step onward in the process of evolution to the Declaration of Independence and the constitution of 1787.<sup>2</sup>

Consequently we find in the new government the same general division of powers into executive, legislative and judicial, with the addition of a system of checks and balances which experience with arbitrary power had shown to be necessary. Here a step in advance was taken and a new and original idea in political science was introduced and applied: the judiciary was made a co-ordinate department of government, while retaining, as a matter of course, all the judicial powers which belonged to it in England and in the colonies. With the judicial system came the rules of the common law, as far as applicable to the changed conditions; with the common law came the doctrine of precedent. So far, this was simply transplanting and adopting the law to which the colonists were accustomed, and which they considered the best legal system in the world. But the change in the form of government from a monarchy to a republic rendered necessary a change in theory as to the location of sovereignty. The absolute authority of Parliament as sovereign was now transferred to the people, and the restraints which applied to the executive in the English system became applicable to the new government as a whole.<sup>3</sup>

<sup>1</sup> Brougham's Political Philosophy, III, 326.

<sup>2</sup> In the language of a recent writer, "The English colonies in America, which were finally transformed into independent commonwealths through their severance from the mother country, were in a legal and constitutional sense involuntary and unconscious reproductions of the English kingdom, — inevitable products of a natural process of political evolution." Hannis Taylor, *The Origin and Growth of the English Constitution*, 77.

<sup>3</sup> See the language of Mr. Justice Matthews in *Poindexter vs. Greenhow*, 114 U. S. 270, 290.

The traditional powers of government fell naturally to the three departments, executive, legislative and judicial.<sup>1</sup> These departments were to exercise delegated powers,<sup>2</sup> defined and limited by a *lex legum* or over-law. These delegated powers were to be exercised in conformity to the will of the sovereign principal, as expressed in the instrument conveying the power. Each department in exercising the power delegated to it acts for the sovereign, and is necessarily independent of any and all other departments. This principle of agency applies to both the national and the state governments, the former exercising such power as is expressly or impliedly granted by the national constitution; the latter all power not added to them by the state or federal constitutions. The change in location of the sovereignty resulted in raising the judiciary to the position of a co-ordinate department of government, and the application of the established principles of the common law secured to it a controlling influence over the other departments. The interpretation of the supreme law, being a judicial act, belonged to the judiciary.

This doctrine is of course the outgrowth of a written constitution and a federal system of government; but the form of government alone will not account for its general acceptance. Only a law-observing people will regard the decision of a court as equivalent to the repeal or enactment of a law.

American people were a constitutional people strongly imbued with the legal spirit. They brought with them to America "the elixir of constitutions" and an inborn reverence for the constable's staff, — possessions which, in the language of Carlyle, had cost England "much blood and valiant sweat of valour and brain for centuries long in achieving." They came from a race accustomed to settling difficulties on legal lines. In the great debates of English history, as Macaulay says, there was not a word about Brutus the elder or Brutus the younger.

<sup>1</sup> "A legislative and an executive and a judicial power comprehend the whole of the government." John Adams, Works, IV, 186.

<sup>2</sup> Sovereignty itself cannot be alienated, but its exercise can be delegated. See Wilson's Constitutional Conventions, § 20; Lieber, Political Ethics, I, 251.

All questions of liberty and freedom have been argued as matters of law and not of expediency. On the question of the vacancy of the throne Somers and Nottingham argued as on a demurrer. The people always felt that if the law could but be discovered, it must necessarily be sufficient for their protection. This legal spirit — this inborn habit of submission to law and the consequent respect for the courts — is essential to the success of a federal system of government ; and when it exists, the prominence of the judiciary in the constitution is assured. The law courts become the pivots upon which the constitutional arrangements turn, and the judges become not only the guardians but the masters of the constitution.<sup>1</sup>

The forces at work in society at a given time are not ordinarily understood or appreciated by the people, and the founders of our government did not anticipate the part the judiciary was to play in the new system. To many it seemed the weakest of the three departments. Elevating it to equal rank with the executive and legislature, though in the line of natural development, was an experiment, and it was reasonable to anticipate that the new department would be most liable to encroachment. Neither Madison nor Hamilton, both of whom expected the courts to exercise the power of declaring laws unconstitutional, appreciated the mighty force passing into the hand of the hitherto subordinate power. Hamilton wrote :

Whoever attentively considers the different departments of power must perceive that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be least dangerous to the political rights of the constitution ; because it will be the least in a capacity to annoy or injure them. . . . The judiciary is beyond comparison the weakest of the departments of power ; it can never attack with success either of the other two, and all possible care is requisite to enable it to defend itself against their attacks.<sup>2</sup>

This seems to have been a protest against a certain jealousy of the new department felt by the people and by some few prominent men, easily traceable to the history of the immediate times.

<sup>1</sup> Dicey, *The Law Quarterly*, January, 1885; cf. also his *Law of the Constitution*, 167.

<sup>2</sup> *The Federalist*, No. 78.

eral years after the organization of the government, Wilson, a judge of the Supreme Court, alluded in a public lecture to the existing jealousies and prejudices against the executive and judicial departments, and traced them to the habits of mind acquired before the Revolution, when these departments were under the control of those in no way responsible to the people.<sup>1</sup> They had become objects of distrust because derived from a foreign source, regulated by foreign maxims and directed for foreign purposes, while the legislature was looked to as the guardian of the liberties and political hopes of the people.<sup>2</sup>

### III.

The natural result of the contest with parliamentary power was a disposition on the part of the colonists to look with favor on any legal or constitutional principle which would limit executive power. Consequently, we find the colonial lawyers and statesmen accepting the untenable theory of Coke and Hobart. The fear of the courts was lost sight of for the time. In his famous argument on the writs of assistance, James Otis maintained that an act of Parliament "against the constitution is void; an act against natural equity is void; and if an act of Parliament should be made in the very language of this petition, it would be void."<sup>3</sup> John Adams wrote to Mr. Justice Cushing in 1776: "You have my hearty concurrence in telling the jury the nullity of acts of Parliament. I am determined to adopt that opinion, let the *jus gladii* say what it will."<sup>4</sup> This was to have been the prevailing opinion when in 1779 Massachusetts framed what became the model for the various state constitutions. In this memorable instrument is found the first codiment of the conception of three co-ordinate departments

Wilson's Works, I, 397.

"Sir," said John Rutledge, "I can never forget that in the great and good Book, which I look for all truth and all wisdom, the book of Kings succeeds the book of Judges."

Massachusetts Reports, 174. Foster's Life of Otis, 62.

Works of John Adams, IX, 390.

of government. With the preconceived idea of the judicial power, it was inevitable that the duty of construing and protecting the new constitution should fall to the courts; and this seems to have been the intent of the men who drafted the constitution.<sup>1</sup>

The credit of the first of the long line of decisions by which this doctrine was established in our constitutional law belongs to Chief Justice Brearley and his associates on the bench of the supreme court of New Jersey. The case of *Holmes vs. Walton*<sup>2</sup> antedates all others. It was brought by writ of *certiorari* before the supreme court September 9, 1779, and was argued on constitutional grounds November 11 of the same year. The court held the matter under advisement over three terms and on September 7, 1780, the judges<sup>3</sup> gave their opinions *seriatim* for the plaintiff in *certiorari*.<sup>4</sup> In anticipation of the final decision, the legislature amended the statute in question.<sup>5</sup> This decision was followed in 1796 in the case of *Taylor vs. Reading*,<sup>6</sup> and again in 1804 in *The State vs. Parkhurst*.<sup>7</sup> The very interesting case of *Trevett vs. Weeden*<sup>8</sup> was decided in Rhode Island in 1786. It has been frequently cited as the first case in which the courts held an act of the legislature unconstitutional and void on the precise ground of conflict with the fundamental law.<sup>9</sup> But this seems to be an error. The point was raised and argued and attracted much

<sup>1</sup> Adams, *The Emancipation of Massachusetts*, ch. x.

<sup>2</sup> Referred to in *State vs. Parkhurst*, 4 Halstead (N. J.), 444.

<sup>3</sup> Brearley, Smith and Symmes.

<sup>4</sup> See Dr. Austin Scott, *Papers of the American Historical Association*, vol. II, p. 46.

<sup>5</sup> *Laws of N. J.* (orig. ed.) 49; 4 Halstead, 444. Gouverneur Morris wrote to the Pennsylvania legislature in 1785: "In New Jersey the judges pronounced a law unconstitutional and void. Surely, no good citizen can wish to see the point decided in the tribunals of Pennsylvania. Such power in judges is dangerous, but unless it somewhere exists, the time employed in framing a bill of rights and form of government was merely thrown away." *Sparks' Life of Gouverneur Morris*, III, 438.

<sup>6</sup> 4 Halstead, Appendix, 440.

<sup>7</sup> 4 Halstead, 427.

<sup>8</sup> *Trevett vs. Weeden*; Pamphlet by J. B. Varnum (Providence, 1787). No reports were published in Rhode Island or New Jersey at this time.

<sup>9</sup> Cooley, *Constitutional Limitations* (4th ed.), 196; Bryce, *The American Commonwealth*, I, 532; Fiske, *The Critical Period of American History*, 175-6; McMaster, *History of the People of the U. S.*, I, 337-9; Arnold, *History of Rhode Island*, II, 24.

tion; but the action was dismissed for want of jurisdiction and the constitutional question was not decided.<sup>1</sup> This case is of much historical interest. The legislature had passed one of the numerous tender laws of the period, for the purpose of forcing the people to accept the paper money of the state at face value. A heavy penalty was attached to the refusal to accept this money, and it was provided that the trial for the offence should be without a jury. The discussion of the question of constitutionality roused the legislature in defence of its threatened supremacy and, in language which leaves no doubt as to the legislative conception of the relative dignity and importance of the two departments, the judges were summoned to appear and explain their action.<sup>2</sup> Three of the judges obeyed the summons, but the other two pleaded sickness and the hearing was postponed. Mr Justice Howell, in an elaborate speech delivered before the legislature in defence of the court, declared that "the order by which the judges were before the legislature might be considered as calling upon them to assist in the exercise of legislation, or to render the reasons of their judicial

the judgment of the court was as follows: "Whereupon, all and singular the premises being seen and by the justices of the court aforesaid fully understood: it is ordered, adjudged and declared, that the said complaint does not come under the jurisdiction of the justices here present and that the same be and is hereby dismissed."

<sup>1</sup> R. I. Acts and Resolves, Oct (2d Sess.) 1786, 6. In an argument in support of the court before the legislature, one of the judges said: "The legislature summoned a fact in their summons to the judges which was not justified or warranted by the record. The plea of the defendant in a matter of mere surplusage concerns the act of the General Assembly as unconstitutional and so void; but the intention of the court simply is that the information is not cognizable before them."

<sup>2</sup> It appears that the plea has been mistaken for the judgment." See *The Worcester Case*, March 7, 1889.

Whereas," ran the resolution, "it appears that the honorable the judges of the Superior Court of Judicature, at the last September term of said court in the county of Worcester, have by the judgment of said court, adjudged an act of the supreme legislature of this state to be unconstitutional and so absolutely void; and whereas it is suggested that the said judgment is unprecedented in this state and may tend to diminish the authority of the legislative authority thereof: it is therefore voted and resolved that all the judges of said court be forthwith cited by the sheriffs of the respective counties in which they live or may be found, to give their immediate attendance upon this assembly to assign the reasons and grounds for the aforesaid judgment; and that the clerk of said court be directed to attend this assembly at the same time, with the records of said court which relate to the said judgment."

determination." He declined to do the latter, but declared that "the court was ever ready, as constituting the legal counsellors of the state, to render any kind of assistance to the legislature in framing new or repealing old laws."<sup>1</sup> An unsuccessful attempt was made to remove the judges who had possessed the courage to allow counsel to cast doubt upon legislative supremacy, but they served out the term for which they had been elected. As the election was by the legislature, they were not awarded a new term, but before the new judges took their seats the obnoxious law was repealed.<sup>2</sup>

In Virginia the first clear assertion by the courts of the power to declare a law void was in 1782. As early as 1772, in *Robbins vs. Hardaway*,<sup>3</sup> Mason had argued against the validity of an act which provided for the sale of the descendants of Indian women as slaves; but no decision was reached, as it was found that the statute had been repealed. He argued that the act was void because contrary to natural right and justice, and a violation of the duties and obligations which men owe to each other in a state of nature. In May, 1778, the legislature of Virginia passed an act of attainder against one Josiah Phillips, an outlaw who had been devastating the state. During the year Phillips was captured, convicted and executed for highway robbery, the act of attainder being disregarded. It is uncertain whether this neglect of the law was the voluntary act of the attorney-general, or whether the court refused to recognize the attainder.<sup>4</sup> Professor Tucker asserts<sup>5</sup> that the latter was the case and that the court directed the prisoner to be tried. If this is correct, the case antedates *Trevett vs. Weeden*. In 1776 a law was passed in Virginia taking from the executive the power of pardon in cases of treason. Under this act

<sup>1</sup> 2 Chandler's Criminal Trials, 327. No such practice appears to have prevailed before the Revolution. See Memorandum on the Legal Effect of Opinions given by Judges, by Prof. J. B. Thayer, p. 12.

<sup>2</sup> Consequently, Professor Bryce's statement that "they were replaced by a more subservient bench" is purely a matter of conjecture, as the new judges had no opportunity to consider these statutes.

<sup>3</sup> Jefferson's Reports (Va.), 109.

<sup>4</sup> See 4 Burk, 305-6.

<sup>5</sup> See Tucker's Blackstone, App. I, 293.

Caton, having been convicted of treason, was pardoned by House of Delegates without the concurrence of the Senate. The case reached the courts in 1782.<sup>1</sup> When the attorney-general moved for execution upon the prisoner, the latter led the pardon of the House. Under the constitution as then stood, the case was referred to the court of appeals for its finality and difficulty. There it was argued that the act of the governor was contrary to the plain intent of the constitution and hence void. To the distinguished gentlemen who constituted the court of appeals in Virginia in 1782, this was a very troubling question; but they met it with becoming boldness. Attorney-General Randolph, afterwards attorney-general and Secretary of State of the United States, argued that whether the act was contrary to the spirit of the constitution or not, the court was not authorized to declare it void. The arguments at bar must have been spirited, as they drew from the chief justice the somewhat hysterical statement: "If the whole legislature (an event to be deprecated) should attempt to overleap bounds prescribed to them by the people, I, in administering the public justice of the country, will meet the united powers at my seat in this tribunal and, pointing to the constitution, will say to them: 'Here is the limit of your authority, and here shall you go, but no further.'" The court did not decide en banc, but Pendleton, the president, remarked that the question of the power claimed for the court was "undoubtedly a very important, and, I may add, tremendous question, the decision of which might involve consequences to which gentlemen have not yet extended their ideas." The report of the case is: "Chancellor Blair, with the rest of the judges, was of the opinion that the court had power to declare any resolution of the legislature or of either branch of it, to be unconstitutional and void."

Twenty years later, in 1788, the question was again raised in the interesting "Case of the Judges,"<sup>2</sup> which grew out of an attempt by the legislature to impose additional and extraordinary duties upon the court. The judges addressed a remon-

<sup>1</sup> 1 Commonwealth v. Caton, 4 Call (Va.), 1.

<sup>2</sup> 4 Call. (Va.), 135.



strance to the legislature, in which they expressed their regret at being obliged to pass upon the constitutionality of a law, but declared that the alternative was either to decide the question or to resign their offices, and that not until this dilemma presented itself was the question actually considered. The latter alternative would have been their choice, if they could have considered the question as affecting their individual interests only; but viewing it in relation to their offices, and finding themselves called by their country to sustain an important position as one of the pillars on which the great fabric of the government was erected, they judged that their resignation would subject them to the reproach of deserting their station and betraying the sacred interests of society intrusted to them. On that ground they found themselves obliged to decide the question, however their delicacy might be wounded or whatever temporary inconvenience might ensue, and in that decision to declare "that the constitution and the acts were in opposition; that they could not exist together, and that the former must control the operation of the latter." Thus, not until it became a question of self-preservation did the court grapple with what was indeed a "tremendous question." These views were again declared in several later cases and were directly enforced in 1793 in *Kemper vs. Hawkins*.<sup>1</sup>

In New York the question was first raised in the celebrated case of *Rutger vs. Waddington*, decided in 1784. After hearing a very able argument by Alexander Hamilton, the Mayor's Court of New York held unconstitutional and void the Trespass act, which authorized actions by owners against those who had occupied their houses under British orders during the British occupation. Hamilton argued that the law violated natural justice, and the decision seems to have been placed upon this ground. It was a time of great public excitement, and popular meetings were held to denounce the decision. The Assembly resolved that "it would render legislatures useless"; and a mass meeting of indignant citizens declared that "such power would

<sup>1</sup> 2 Va. Cas. 20. See also *Turner vs. Turner*, 4 Call. (Va.), 234 (1792); *Page vs. Pendleton*, Wythe's (Va.) Rep., 211 (1793).

most pernicious."<sup>1</sup> The decision does not seem to have been taken very seriously even by its friends, as Hamilton tells us that he compromised subsequent suits based on the act.<sup>2</sup>

In 1792 the supreme court of South Carolina held an act of the colonial legislature of 1712 void, as in contravention of common-right and of Magna Charta.<sup>3</sup> In North Carolina the power of the court to refuse to enforce a law because unconstitutional was elaborately argued and considered in 1787.<sup>4</sup> The court took its case under advisement and earnestly sought to avoid a decision on the constitutional question. After referring to these previous manoeuvres, the report of the case says:

The court then, after every reasonable endeavor had been used in order to avoid a disagreeable difference between the legislative and executive powers of the state, at length with much apparent reluctance, but with great deliberation and firmness, gave their opinion separately but unanimously for overruling the aforementioned motion for the dismissal of the said suits.

In the course of the opinion the judges observed that

the obligation of their oaths and the duty of their office required them in that situation, to give their opinion on that important and contentious subject, and that notwithstanding the great reluctance they felt against involving themselves in a dispute with the legislature of the state, yet no objection of censure or respect could come in common or authorize them to dispense with a duty they owed to the people in consequence of the trust they were invested with under the solemnity of their oaths.<sup>5</sup>

Massachusetts seems to have attempted to grant the power of the court by statute. In 1786, in an act repealing any laws of the commonwealth inconsistent with the enforcement of the treaty with Great Britain, it was enacted

that the courts of law and equity within this commonwealth be, and they are hereby, directed and required in all cases and questions coming

<sup>1</sup> *Trimmer* 75. *Waldington, Dawson's Pamphlet*, p. 44.

<sup>2</sup> *Works*, edited by J. C. Hamilton, V, 115, 116; VII, 197; 19 *American Law*, 180.

<sup>3</sup> *Woman* 75. *Middleton*, 1 Bay, 252.

<sup>4</sup> *Bayard vs. Singleton*, 1 *Martin*, 42.

<sup>5</sup> *Ogden* 75. *Witherspoon*, 2 *Hayward*, 227 (1802).

before them respectively and arising from or touching the said treaty, to decide and adjudge according to the tenor, true intent and meaning of the same, anything in the said acts or parts of acts to the contrary thereof in any wise notwithstanding.<sup>1</sup>

#### IV.

When the convention met in 1787 the idea of controlling the legislature through the judiciary must have been familiar to most of the members, as it had been asserted in New Jersey, Virginia, New York, Massachusetts and North Carolina.<sup>2</sup> The discussion had caused much popular excitement and the doctrine met with general approval outside of the legislatures.<sup>3</sup> It was necessary to devise some plan which would protect the national and state governments in the exercise of the full measure of power assigned to each. Several propositions having this in view were submitted to the convention. One contemplated that the governors of the states should be appointed by the central government; another that the central legislature should have the power of repealing state laws; while a third provided for a council of revision of which the judiciary was to form a part. The last-mentioned plan was strongly urged by some of the most prominent men of the convention. Against its adoption it was argued that the courts already had control over the laws through the power they possessed of declaring them unconstitutional. Madison,<sup>4</sup> while admitting that the courts would possess this power, wished a tribunal for revision, as laws might be unjust, unwise, dangerous and destructive,

<sup>1</sup> 1 Laws, 311. Two years later the Supreme Judicial Court held an act unconstitutional. See letter of J. B. Cutting to Jefferson; Bancroft's History of the Constitution, II, 472-3.

<sup>2</sup> Chief Justice Brearley of New Jersey was a member of the convention.

<sup>3</sup> Mr. George Ticknor Curtis says: "The somewhat crude idea of making a negative on state legislation a *legislative* power of the national government shows that the discovery had not yet been made of exercising such a control through the judicial department." Narrative and Critical History of America, VII, 240; Constitutional History of the U. S., new ed., I, 345. This seems inconsistent with the facts stated above. See language of Gerry, Elliot's Debates, V, 151.

<sup>4</sup> Elliot's Debates, V, 346.

yet not be so obviously unconstitutional as to justify the  
s in refusing to give them effect.

ie supremacy of the law and the preservation of the proper  
ilibrium between state and federal power required that there  
d be some authority competent to decide whether Congress  
state legislature had or had not in a particular instance trans-  
ed the law of the constitution. Nothing could be gained  
establishing a separate body of men to pronounce upon the  
itutionality of laws. Such a tribunal would be as liable  
r as the legislature. "*Quis custodiet custodes? Tribuni  
phori?*" The peculiar training of the judges, "the middle-  
' between "the pure philosophers and the pure men of  
nment," fitted them for this duty.<sup>1</sup> That the courts would  
this power under the constitution was generally admitted  
ie delegates. It was commented upon with approval in the  
itutional convention by Gerry, Gouverneur Morris, Wil-  
George Mason and Luther Martin; with disapproval by  
er of Maryland and Dickinson of Delaware, who could  
orget that the justiciary of Aragon became by degrees its  
ver. In the state conventions, the matter was discussed  
onnecticut by Ellsworth, who called the judiciary "a con-  
itional check"; in North Carolina by Davies; in Pennsylv-  
by Wilson; and in Virginia by Marshall, Randolph and  
y. The last named, a decided opponent of the constitu-  
was an earnest advocate of the independence of the judi-  
. He believed that the judges should decide upon the  
itutionality of the law, and feared that the national judi-  
, as organized, would not possess sufficient independence  
is purpose. The following is his language:

e honorable gentleman did our judiciary honor in saying that they  
rmness enough to counteract the legislature in some cases. Yes,  
r judges opposed the acts of the legislature. We have this land-  
to guide us. They had fortitude to declare that they were the  
ary and would oppose unconstitutional acts. Are you sure that  
ederal judiciary will act thus? Is that judiciary so well constituted  
o independent of the other branches as our state judiciary? Where

<sup>1</sup> Lieber, *Civil Liberty*, 162-4.

are your landmarks in this government? I will be bold to say you cannot find any.<sup>1</sup>

In *The Federalist*<sup>2</sup> the independence of the judiciary is elaborately discussed, and the existence of the power to pass upon questions of constitutionality seems to be taken for granted. It is there commented upon not as a mere possibility, but apparently in order to remove any lingering objections there might be to such a practice.<sup>3</sup>

In accordance with this idea, the Judiciary act of 1789 provided for a review in the Supreme Court of cases where the validity of a state statute or of any exercise of state authority should be drawn in question on the ground of repugnancy to the constitution, treaties or laws of the United States, and the decision should be in favor of validity.<sup>4</sup> The power appears to have met with approval in the federal courts, and it was boldly asserted as soon as the judges had acquired self-confidence. It must be remembered, however, that the federal judiciary was experimental. As De Tocqueville said: "Courts are the all-powerful guardians of a people which respect law; but they would be impotent against popular neglect and contempt." The nearest approach to a federal tribunal under the Confederation was the committee of appeals appointed by Congress in 1777, and its successor, the court of appeals, established in 1780. The career of these tribunals had not been such as to justify the new court in feeling that, as their apparent successor, it possessed a very great share of popular respect. The

<sup>1</sup> Elliot's Debates, II, 248.

<sup>2</sup> No. 78 and No. 80.

<sup>3</sup> 19 *American Law Review*, 184. For further illustration of the application of the doctrine, see *Ham vs. McClaws*, 1 Bay (S. C.), 93 (1792); *White vs. Kendricks*, 1 Brevard (S. C.), 469 (1805); *Austin vs. Trustees*, 1 Yeates (Pa.), 260 (1793); *Respondent vs. Ducquet*, 2 Yeates, 493 (1799). It met with much opposition in Pennsylvania. In 1808, in *Emerick vs. Harris*, 1 Binney, 416, the court considered it necessary to defend its position in a lengthy argument. The doctrine was opposed as late as 1843 in *Commonwealth vs. Mann*, 5 W. & S. 403.

<sup>4</sup> In 1824, Letcher of Kentucky introduced a resolution in Congress so to amend the law as to require more than a majority of the judges to declare a state law void. 8 Benton's Abridgment, 51. In 1830 an attempt was made to repeal this section (25) of the act. The bill was lost in the House, by a vote of 137 to 51; but many leading men voted with the minority. Sumner's Andrew Jackson (*American Statesmen*), 173.

an important decision of the committee of appeals and the injunction issued to enforce it were treated with contempt by the Pennsylvania court.<sup>1</sup>

The first case in which the power of the federal courts to decline to enforce an act of Congress was asserted well illustrates the prevailing idea as to the position of the judiciary and the extreme modesty of the judges. In March, 1792, Congress passed an act providing for the settlement of claims of widows and orphans barred by certain limitations, and regulating claims to invalid pensions. The act directed the United States circuit courts to pass upon such claims, but made their decision subject to review by the secretary of War and by Congress. In the circuit court for the district of New York, Chief Justice Jay, Justice Cushing and District Judge Duane filed an order declining to execute the act as judges, but declaring that the objects of this act are exceedingly benevolent and do real honor to the humanity and justice of Congress; and as the judges desire to assist on all proper occasions and in every proper manner their high respect for the National Legislature, they will execute this act in the capacity of commissioners.

Justices Wilson and Blair and District Judge Peters of the circuit court for Pennsylvania, being anxious that the President should not misunderstand them, addressed a letter to the chief magistrate, explaining the position taken by them "on a late and painful occasion." After laying down the general principles governing the distribution of the powers of government, and declaring the importance of an independent judiciary and the reasons for their determination, the judges assured the President that, though it became necessary, it was far from pleasant to be obliged to act contrary either to the obvious directions of Congress or to a constitutional principle in their judgment equally obvious, and that the situation excited feelings in them which they hoped never to experience again.

Justice Iredell and District Judge Sitgreaves of the North Carolina circuit, before any case came before them, joined in

<sup>1</sup> Thirty years later the authority of the court of appeals was affirmed by the Supreme Court of the United States in *U. S. vs. Peters*, 5 Cranch, 115. See

an elaborate letter to the President explaining their conduct, expressing their doubts as to their powers under the law to act as commissioners and deploring their position.

We beg to premise [wrote the learned judges] that it is as much our inclination as it is our duty, to receive with all possible respect every act of the legislature, and that we never can find ourselves in a more painful situation, than to be obliged to object to the execution of any law, more especially to the execution of one founded on the purest principles of humanity and justice, which the act in question undeniably is.

The question reached the Supreme Court at the August term, 1792, on an application for a *mandamus*<sup>1</sup> to the district court for the district of Pennsylvania, commanding it to proceed and hear the petition of one Hayburn to be placed on the list as an invalid pensioner. Attorney-General Randolph entered into a very elaborate description of the powers and duties of the court and advised the execution of the law.<sup>2</sup> No doubt existed in the minds of the judges, yet so great was the desire to avoid a conflict that the motion was taken under advisement and held until the statute was amended.

Sections two, three and four of the act of 1792 were repealed at the next session of Congress. The repealing act provided another mode for taking the testimony and deciding upon the validity of claims to the pensions granted by the former law. The third section saved all rights to pensions which might be founded "upon any legal adjudication" under the act of 1792, and made it the duty of the secretary of War in conjunction with the attorney-general to take such measures as might be necessary to obtain an adjudication of the Supreme Court, "on the validity of such rights, claimed under the act aforesaid, by the determination of certain persons styling themselves commis-

Van Santvoord's Chief Justices, 202; Patterson, J., in *Penhallow vs. Doane*, 3 Dallas, 54. For history of these early courts, see J. F. Jameson in *Essays in Constitutional History during the Formative Period*; also 131 U. S. Reports, Appendix.

<sup>1</sup> Hayburn's Case, 2 Dallas (U. S.), 409.

<sup>2</sup> Randolph said of this argument: "The sum of my argument was an admission of the power [of the court] to refuse to execute, but the unfitness of this occasion." Conway's Edmund Randolph, 144-5.

ers." The purpose evidently was to have it determined whether under the act conferring the power upon the circuit court, the judges of those courts, when refusing to act as courts, could legally act as commissioners out of court. In order to effect this determined an amicable action was brought by the United States against one Yale Todd to recover money paid under a finding of Chief Justice Jay and Judges Cushing and Law, acting as commissioners. After argument, judgment was rendered against the defendant. No opinion stating the grounds of the decision was filed, but the result was a determination that, as the power conferred by the act of 1792 was not special within the meaning of the constitution, the act was constitutional. Chief Justice Jay, and Justices Cushing, Johnson, Blair and Patterson were present at the decision, which seems to have been unanimous.<sup>1</sup>

In 1798 the question was again raised in the Supreme Court of the United States,<sup>2</sup> and it was held that there was no constitutional restriction to protect a state from passing a retroactive law affecting property right only. Mr. Justice Chase thought that a legislative act contrary to the first principles of the social compact could not be considered a rightful exercise of legislative authority. He was satisfied that the Supreme Court had jurisdiction to determine that any law of the state legislature contrary to the constitution of the state was void, but declined to express an opinion whether they could declare void an act of Congress contrary to the federal constitution. Justices Cushing and Patterson concurred in the decision, but did not discuss the question. Mr. Justice Iredell, having gained confidence since 1792, said:

If any act of Congress or of the legislature of a state violates those constitutional provisions, it is unquestionably void; though I admit that, the authority to declare it void is of a delicate and awful nature, the court will never resort to that authority but in a clear and urgent case. On the other hand, the legislature of the Union, or the legislature of any member of the Union, shall pass a law within the general scope

<sup>1</sup> Only report of the case is in a note to U. S. vs. Ferreira, 13 Howard, 40, 52.

<sup>2</sup> Callender vs. Bull, 3 Dallas (U. S.), 386.



their constitutional powers, the court cannot pronounce it to be void, merely because it is in their judgment contrary to the natural principles of justice.

As early as 1795 Justice Patterson, when on circuit, in a case growing out of the territorial controversy between Connecticut and Pennsylvania, had held the Pennsylvania "quieting and confirming act" unconstitutional and void.<sup>1</sup> In his elaborate charge to the jury, after referring to the unlimited power of the English Parliament and the nature of written and unwritten constitutions, the learned judge said :

I take it to be a clear position, that if a legislative act impugns a constitutional principle, the former must give way and be rejected on the score of repugnance. I hold it to be a position equally clear and sound, that in such case, it will be the duty of the court to adhere to the constitution, and to declare the act null and void. The constitution is the basis of legislative authority. It lies at the foundation of all law and is a rule and commission by which both legislators and judges are to proceed. It is an important principle, which in the discussion of questions of the present kind ought never to be lost sight of, that the judiciary in this country is not a subordinate but a co-ordinate branch of the government.

This is a very important advance from the position of the judges three years earlier. Yet in 1800, Mr. Justice Chase said :

Although it is alleged that all acts of the legislature in direct opposition to the prohibition of the constitution would be void, yet it still remains a question where the power resides to declare it void. It is indeed a general opinion, it is expressly admitted by all this bar, and some of the judges have individually in the circuits decided, that the Supreme Court can declare an act of Congress to be unconstitutional and therefore invalid ; but there is no adjudication of the Supreme Court itself upon the point. I concur, however, in the general sentiment. . . .<sup>2</sup>

Whether this power could be employed to invalidate a law enacted previous to the adoption of the constitution was suggested, but not decided.

<sup>1</sup> *Van Horn vs. Dorrance*, 2 Dallas (Pa.), 304.

<sup>2</sup> *Cooper vs. Telfair*, 4 Dallas, 194. The learned judge had evidently forgotten the decision in *United States vs. Todd*.

Thus, the question was in a measure an open one when it came before the Supreme Court in the well-known case of *Marbury vs. Madison*, decided in 1803,<sup>1</sup> in which "the power and duty of the judiciary to disregard an unconstitutional act of Congress or of any state legislature were declared in an argument approaching to the precision and certainty of a mathematical demonstration."<sup>2</sup> President Adams nominated Marbury to a judicial office and, the Senate having confirmed the nomination, his commission was made out, signed and sealed, but not delivered. Upon the change of administration, Madison, secretary of State, refused to deliver it; whereupon Marbury, claiming that his title to the office was complete, made application to the Supreme Court for a writ of *mandamus* commanding the delivery of the commission. The court unanimously held that the legal right to the office had vested in Marbury, and that to withhold the commission was a violation of a legal right for which *mandamus* was the proper remedy; but that the provision of the Judiciary act purporting to give the Supreme Court jurisdiction to issue writs of *mandamus* in original proceedings was not warranted by the constitution and was therefore inoperative and void.

This opinion followed the practice of the English courts and rejected the ministerial and executive officers of the government to the control of the courts.<sup>3</sup> The language of Chief Justice Marshall is so clear and conclusive that I quote from it at some length :

The question whether an act repugnant to the constitution can become law of the land is a question deeply interesting to the United States ; happily not of an intricacy proportioned to its interest. It seems necessary to recognize certain principles supposed to have been long and well established, to decide it.

That the people have an original right to establish for their future government such principles as in their opinion shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected. . . . This original and supreme will organizes the

<sup>1</sup> Cranch, 137.

<sup>2</sup> Kent's Commentaries, I, 453.

Jefferson considered the opinion as to the legality of Marbury's claim "an obiter dictum of the chief justice and a perversion of the law " Works, VII, 290.

government and assigns to different departments their respective powers. . . . The powers of the legislature are defined and limited ; and that those limits may not be mistaken or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if those limits may at any time be passed by those intended to be restrained? . . . The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like any other acts is alterable when the legislature shall please to alter it. If the former part of the alternative be true, then a legislative act contrary to the constitution is not law. If the latter part be true, then written constitutions are absurd attempts on the part of the people to limit a power in its own nature illimitable. . . .

If an act of the legislature repugnant to the constitution is void, does it, notwithstanding its invalidity, bind the courts and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as though it was a law? This would be to overthrow in fact what was established in theory ; and would seem at first view an absurdity too gross to be insisted upon. It shall, however, receive a more attentive consideration.

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each. . . . This is the very essence of judicial duty. If, then, the courts are to regard the constitution, and the constitution is superior to any ordinary acts of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply.

Those, then, who controvert the principle that the constitution is to be considered in court as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution and see only the law.

The power was never seriously questioned in the federal courts after the decision in *Marbury vs. Madison*, and was gradually established in all the states.<sup>1</sup>

The Supreme Court was from the first a Federalist institution and it applied to constitutional questions the Federalist principles

<sup>1</sup> See *Cohen vs. Virginia*, 6 Wheaton (U. S.), 264; *Fletcher vs. Peck*, 6 Cranch, 87; *Story on the Constitution* II, 367. For a list of cases in which the Supreme Court of the United States has held statutes unconstitutional, see 131 U. S. Reports, Appendix, p. ccxxxv.

nstruction. This gave to the judiciary a political importance which Jefferson and his friends were not slow to appreciate. The Republican party came into power in 1800 by a majority so great that Jefferson in his inaugural address could say: "We are all Republicans—we are all Federalists"; meaning that the entire nation had become Republican. But this must have been with a mental reservation which excluded the federal judiciary. He realized perfectly well that his victory was incomplete so long as Marshall and his friends held the citadel of the Supreme Court. With the court under the control of this Anti-Federalist, the execution of the programme by which the federal government was to be reduced to its true proportions was impossible. Jefferson was an idealistic politician. He believed in the total depravity of his political opponents and in the perfection of his own idyllic theories of society and government. The means adopted to secure the triumph of these theories were of a merely secondary importance. When the new party once gained control, slight irregularities could be corrected or forgotten. He now thought that the future prosperity of the country demanded restraint upon the power of the courts, and in order to secure this, it was necessary to destroy their independence. In his opinion, a judiciary independent of the nation was a solecism.<sup>1</sup> That the country was with him, and would approve any plan having color of law, which would destroy the independence of the power of the Federalists, seemed in the hands of the Republican majority beyond a doubt. When the control of the courts it was resolved to obtain through the process of impeachment. Adams' midnight judges were easily disposed of. The law forbade the removal of the judges from office, but it did not forbid the removal of the office from the judge. This remedy, however, did not reach the real difficulty. The Supreme Court could not be abolished. Impeachment was thereupon adopted as a party weapon and was first used upon insane, inoffensive Judge Pickering, of the district court in New Hampshire. Success was achieved in this case without difficulty and the next move was against the able but

<sup>1</sup> Jefferson's Works, VII, 192.

violent Justice Chase of the Supreme Court. Chase had been guilty of partisan conduct on the bench, deserving of severe censure, but not such as involved any element of crime. Randolph in the House and Giles in the Senate undertook to establish the theory that the Senate, in trying impeachments, did not sit as a court and should discard any procedure analogous to that in a court of justice. The theory, as expressed by Giles, was that the independence of the judiciary was a pure figment of the imagination; that there was not a word in the constitution about it, and that the assertion of such a principle was merely an attempt by the judges to establish an aristocratic despotism in themselves. The power of impeachment was given without limitation to the House of Representatives. The power of trying impeachments was given equally without limitation to the Senate. And "if the judges of the Supreme Court should dare, as they had done, to declare an act of Congress unconstitutional, or to send a *mandamus* to the secretary of State as they had done,"<sup>1</sup> it was the undoubted right of the House of Representatives to impeach them and of the Senate to remove them for giving such opinions, however honest or sincere they may have been in entertaining them.<sup>2</sup> Impeachment was not a criminal prosecution, and the conviction of a judge did not imply any criminality or corruption. It implied simply that the judge had opinions which the Senate considered unsound, and that his office was wanted for the purpose of giving it to some one who would fill it more acceptably to the party in power. A few members of the majority, however, considered this a dangerous doctrine, and would not concede that honest error of opinion was a ground for impeachment. The defence insisted that impeachment was restricted to misdemeanors indictable at law. The Senate became confused and never knew on which theory it proceeded. Chase was acquitted and the advocates of liberal impeachments were covered with ridicule.<sup>3</sup> Had Giles'

<sup>1</sup> J. Q. Adams, *Memoirs*, I, 322.

<sup>2</sup> Jefferson wrote as follows: "As for the safety of society we commit honest maniacs to Bedlam, so judges should be withdrawn from their bench, whose erroneous biases are leading us to destruction." *Works*, I, 82.

<sup>3</sup> Adams' *History of the United States*, II, ch. x.

rine been established in this instance, the next move would have been against the chief justice, for daring to declare an act of Congress unconstitutional. This, however, was the final struggle and the power of the federal courts was never afterwards seriously questioned by Congress.<sup>1</sup>

The doctrine of a co-ordinate judiciary met with violent opposition in some of the Western states, where the people valued the respect for law common in the older communities.

The spirit of democracy generated in the wilds of a new country encouraged an exaggerated reverence for the rights of the majority. That a judge should assume to disregard the rights of the people was to them incomprehensible, and deserving of nothing less than impeachment.<sup>2</sup> It was difficult for the freeman of the West to realize that by the constitution the sovereign people had not only limited their government but had also secured themselves against the whims of a majority.<sup>3</sup>

In 1805 the legislature of Ohio enacted a law defining the powers of the justice of the peace. During the following year Judge Pease of the circuit court decided that certain portions of the statute were repugnant to the constitution of the United States and therefore void. This decision was soon afterwards affirmed by the supreme court of the state. As the act itself was of minor importance, the public clamor must have been due largely to indignation at the assumption of power by the courts. Resolutions looking to the impeachment of the judges were introduced in the legislature of 1807, but were not acted upon.

The conflict between the Supreme Court of the United States and the state of Georgia, encouraged by the national executive, suggested a new theory. In 1838 John Jay of Georgia, who, according to Adams, "affects to be a systematic lawyer," decided that the three departments of the federal government must concur in holding state law unconstitutional in order to set it aside. Adams' Memoirs, IX, 548-9. Annals of Congress, 2d session, 7th Congress, pp. 141, 527, 729, 825. Lloyd's Annals, I, 219, 596. II, 284, 327.

For the recent resolution of the Farmers' Alliance of Minnesota, protesting against the decision of the Supreme Court in the "New Granger cases." [*Infra*, RECORD OF POLITICAL EVENTS, United States, Farmers' Interests.]

Webster, Luther v. Borden, 7 Howard (U. S.). The self-imposed checks and balances of the constitution are "obstacles in the way of the people's whims, not of their will." Lloyd, Democracy and Other Addresses, p. 24.

till the following session, when two of the judges were impeached, but upon trial were acquitted.<sup>1</sup>

In the new state of Kentucky the firmness of the judges was put to a severe test. The majority of the people of the commonwealth belonged to the debtor class. The times were hard and the cry for more money was heard in the halls of legislation. In answer to the popular clamor, the legislature of 1820-21 chartered an institution to be known as the Bank of the Commonwealth. This remarkable bank was to be relieved from all danger of suspension by the very simple expedient of releasing it from any obligation to redeem its notes in specie. Certain lands of the state were pledged for their ultimate redemption, and in the meantime the duties of the bank were confined to the issuing of paper money. This paper was made receivable for public debts and taxes; private creditors could accept it at par or wait two years before taking any steps for the collection of their debts. Naturally this method of relief was not satisfactory to the creditor class. The question of the power of the legislature to pass the law was soon raised, and Judge Clark of the state circuit court held the law unconstitutional.<sup>2</sup> The judge was cited before the House of Representatives, and an effort was made to remove him; but the necessary two-thirds majority could not be obtained.<sup>3</sup> The message of Governor Adair in 1823 approved the relief system and denounced the courts for declaring the law unconstitutional. In the same year the court of appeals held the relief laws void because contrary to the constitution of the United States.<sup>4</sup> The people regarded the decision as an usurpation and an assault upon their liberties. The legislature affirmed the constitutionality of the laws, and an issue was made upon the right of a court to annul a law duly passed by the representatives of the people. The state elections

<sup>1</sup> *Western Law Mont'ly*, June, 1863. Cooley, *Constitutional Limitations* (4th ed.), 160\*.

<sup>2</sup> See 23 *Niles' Register*, Supplement, 153, for the decision, the legislature's proceedings and the judge's defence. The power had been exercised as early as 1801 in *Stidger vs. Rogers*; *Kentucky Decisions*, 52.

<sup>3</sup> The vote was 59 to 35 in favor of removal.

<sup>4</sup> *Lapsley vs. Breashear*, 4 *Litt. (Ky.)*, 47.

24 were fought upon this issue. The relief party struggled for a majority of the legislature large enough to remove the chief justice. They succeeded in getting a majority, but not the necessary two-thirds. They then adopted a new plan. Following the precedent of the repeal of the federal Judiciary act in 1801, they repealed the act by which the court of appeals had been organized and through a new law constituted a new court. The old court held this act unconstitutional. The adherents of the old and the new courts became known as the "old court" and "new court" parties, and for a time the state was in an uproar. The "new court" party at last prevailed and the acts of the old court have since been disregarded.<sup>1</sup>

## V.

An unconstitutional law is a law which either assumes power legislative in its nature or is inconsistent with some provision of the federal or state constitution.<sup>2</sup> In considering a state statute for the purpose of determining its validity, the federal court acts under an express law granting the power.<sup>3</sup> Its duty is to determine whether such state statute is contrary to the Constitution of the United States, and if it is so, to disregard it. The federal court has no authority to declare a state law void if it conflicts with the state constitution.<sup>4</sup> In dealing with the acts of Congress, it is necessary to look only to the Constitution of the United States and to determine whether or not the power sought to be exercised is expressly or impliedly granted by the federal instrument. A state court, construing a state law, has the more complicated duty to perform. It must determine not only whether the act contravenes the federal constitution, but also whether it is in violation of any express or implied provision of the state constitution.

<sup>1</sup> Collins' History of Kentucky (rev. ed.), I, 218, 222.

<sup>2</sup> Commonwealth vs. Maxwell, 27 Pa. St. 444.

<sup>3</sup> Sec. 25 of the Judiciary act of 1789.

<sup>4</sup> Hunt v. Lampshire, 3 Peters (U. S.), 280.



The courts do not sit primarily to decide questions of constitutionality. Their domain is law, not politics. Although the political importance of the doctrine we are now considering is very great, the doctrine is purely legal. A statute can be declared unconstitutional only by refusing to enforce it in a litigated case, or by refusing to recognize it as protecting an officer who attempts to enforce it. The act of the legislature, being in the opinion of the court in excess of its constitutional authority, is simply disregarded. The case before the court is decided, and the constitutional decision is found in the reasons assigned for the judgment.<sup>1</sup>

There are cases, however, in which acts of Congress involving constitutional questions are not subject to review in the courts. Such may arise under the provision of the constitution that the United States shall guarantee to every state in the Union a republican form of government. Questions arising under this section are purely political and wholly beyond the province of the judiciary.<sup>2</sup> A political act cannot be restrained by the judiciary even though it violates the constitution, or a treaty or law made in pursuance thereof.<sup>3</sup> The levying of a protective tariff and the abuse of the power of taxation, are illustrations of political acts which are beyond the power of the courts.<sup>4</sup>

To avoid the uncertainty and inconvenience arising from the practice of permitting an unconstitutional enactment to stand on the statute books as valid until the question is raised in some particular case, various attempts have been made to require the courts or judges to act as general governmental counsel, giving to the executive and legislature in advance opinions upon the constitutionality of proposed measures; but it is now well settled that this would impose other than judi-

<sup>1</sup> For valuable discussions of the theory upon which the courts act, see Bryce, *American Commonwealth*, I, pp. 246-7; Dicey, *Law of the Constitution* (3d ed.), p. 149; Lowell, *Essays on Government*, pp. 104, 119; Woolsey, *Political Science*, II, p. 333; Maine, *Popular Government*, pp. 223, 224.

<sup>2</sup> *Luther vs. Borden*, 7 Howard (U. S.), 1.

<sup>3</sup> *The Cherokee Nation vs. Georgia*, 5 Peters (U. S.), 1.

<sup>4</sup> See Madison's *Works*, IV, 144.

ties upon the judiciary. Soon after the establishment of the national government, Washington asked the opinion of the judges of the Supreme Court upon various questions arising out of the treaty with France.<sup>1</sup> Having some doubts as to the course to be pursued, they asked for delay to consult with their associates. To this the President assented. Marshall in *the life of Washington* writes:

About this time it is probable that the difficulties felt by the judges of the Supreme Court in expressing their sentiments on the points referred to them were communicated to the executive. Considering themselves merely as constituting a tribunal for the decision of controversies brought before them in legal form, these gentlemen deemed it improper to enter the field of politics, by declaring their opinion on questions not growing out of the case before them.

Some of the state constitutions require that the opinions of the judges be taken on some occasions by the legislature and executive.<sup>2</sup> Such opinions are generally held to be advisory and not binding upon the courts in subsequent causes.<sup>3</sup>

Jefferson's Works, IV, 22.

Massachusetts (pt. ii, ch. iii, sec. 2); New Hampshire (1784, pt. ii, title, judiciary, sec. 74); Maine (art. vi, sec. 3); Rhode Island (art. x, sec. 3), Florida (art. v, sec. 16), South Dakota (art. v, 13). The constitution of Colorado (1886) provides that "the supreme court shall give its opinion upon important questions upon solemn occasions, when required by the governor, the senate or house of representatives, and all such opinions shall be published in connection with the reported decisions of the court." This is the only provision which requires the opinion of the court.

Taylor vs. Place, 4 R. I. 324, the court, in dealing with a question on which no opinion had been given, said: "This is the first time since the adoption of the constitution that this question has been brought judicially to the attention of this court."

The advice or opinion given by the judges of this court, when requested, to the governor or to either house of the assembly, under the third section of the tenth article of the constitution, is not a decision of this court; and given as it must be to the aid which the court derives in adversary cases from able and experienced counsel, though it may afford much light from the reasoning or research displayed in it, it has no weight as a precedent. A contrary rule prevails in Maine (70 Me. 880) and in Colorado (*In re Senate Resolution, etc.*, 21 Pac. Rep. 478). In either case, the chief justice, after referring to the fact that "it is the court and the justices, which must answer," says that "these opinions have all the force and effect of judicial precedents." The general question is fully discussed, and the theories reviewed and carefully analyzed by Prof. J. B. Thayer, in his pamphlet No. 1, Memorandum on the Legal Effect of Opinions given by Judges (Boston,

Courts do not exist for the purpose of watching over the general rights of citizens, nor are they instituted for the purpose of regulating and restraining the other co-ordinate departments of government. As against the legislature, constitutional rights only will be protected by the courts. In each state there are two constitutions, one written, the other unwritten. The latter is the outcome of social and political forces in history. It is a political organism, the constitution of the people as distinguished from the constitution of their government. In the more common acceptation, however, a constitution is a "systematic description of such a growth in the shape of a *formula* addressed to the understanding."<sup>1</sup> It is the written or secondary constitution which the courts guard. The oath of office does not bind a judge to protect and obey the primary, organic, unwritten constitution, wherein are found the general principles of justice and humanity not embodied in the written instrument. The protection of these fundamental principles has not been delegated, but is reserved to the people in their sovereign capacity. If either of the departments among which the delegated powers are distributed attempts to exceed its authority and violate fundamental principles, the remedy is in the hands of the people; and as no department will be presumed to violate these principles, no department will undertake to say that another has done so.

The courts cannot act until a party has attempted to use the judiciary as an instrument for the enforcement of rights supposed to have been created or recognized by a statute, or for the defence of some constitutional right which would be violated by the enforcement of a statute. By the refusal to recognize or to enforce a law, it is annulled, and this decision, by virtue of the doctrine of precedent, is generally followed in similar cases in the future. Hence, it is useless to institute new cases and the law becomes a dead letter. This is the exercise of the ordinary judicial function of deciding between conflicting laws, and the legislature cannot, by a contrary conclusion, affect the decision.

<sup>1</sup> Jameson, *Constitutional Conventions* (2d ed.), p. 67; Brownson, *The American Republic*, p. 218.

as a rule, the judges have exercised this great power carefully and with due respect to the legislature. Some courts have so far as to adopt a rule that they will not hold a statute unconstitutional by a majority of a mere quorum, but will postpone the hearing until the wisdom of a full bench can be brought to bear upon the question.<sup>1</sup> But this is a mere matter of propriety, not of constitutional obligation. It is a well established rule that the question of constitutionality will not be decided unless it is necessary to the determination of the main question. To quote from the language of the supreme court of Indiana:

While the courts cannot shun the discussion of constitutional questions when fairly presented, they will not go out of their way to find topics. They will not seek to draw in such matters collaterally, on trivial occasions. It is both more proper and more respectful to the coordinate department, to discuss constitutional questions only when such is the very *lis mota*. Thus presented and determined, the decision carries as much weight with it to which no extra-judicial question is entitled.<sup>2</sup>

Any other question is presented by the record upon which judgment can be rested, the constitutional question becomes immaterial.

Another important limitation upon the action of the courts is the presumption that a statute is valid until it is complained of by some one whose rights are invaded. A party whose rights are not affected by the statute cannot be heard against its constitutionality.<sup>3</sup> The statute is also given the benefit of all reasonable doubt. When the courts are called upon to consider the constitutionality of a statute, they will, said Chief Justice Shaw,

approach the question with great caution, examine it in every possible way, and ponder upon it as long as deliberation and patient attention

<sup>1</sup> *Scott vs. Bank*, 8 Peters (U. S.), 118.

<sup>2</sup> *Hoover vs. Wood*, 9 Ind. 287.

<sup>3</sup> *Wellington, Petitioner*, 16 Pick. (Mass.), 87, 96, the court says: "*Prima facie*, the face of the act itself, nothing will generally appear to show that the act is unconstitutional, and it is only when some person attempts to resist its operation, and calls in aid of the judicial power to pronounce it void as to him, his property or his rights, that the objection of unconstitutionality can be presented and sustained. Respecting the legislature, therefore, concurs with well established principles of law in the conclusion that such an act is not void, but voidable only; and it follows as a necessary inference from this proposition that this ground of avoidance can be taken

can throw any new light on the subject ; and never declare a statute void, unless the nullity and invalidity of an act are placed in their judgment beyond reasonable doubt.<sup>1</sup>

The legislature must be presumed to have acted with integrity and with a desire to keep within the bounds of the constitution,<sup>2</sup> and so acting, deliberately to have solved their own doubts in favor of the constitutionality of the act. Whatever weight the courts are justified in giving to the fact that a statute has received the approval of the legislative and executive departments, is due to this presumption, that they have acted in good faith and have actually considered the question with care. This weight may be overbalanced only by the duty resting upon the courts to give the instrument from which they derive their powers the benefit of the doubt, when a question of conflict occurs.<sup>3</sup>

A statute must always be construed according to the legislative intent. The presumption is that the law was intended to take effect, and the court must, if possible, so construe it as to give it effect. The motives of the legislature cannot be inquired into by the courts, even where fraud is alleged. The presumption that a co-ordinate department has acted in good faith is conclusive. "We are not at liberty," said Chief Justice Chase, "to inquire into the motives of the legislature. We can only examine into its power under the constitution." Where the power exists, the courts are not at liberty to inquire into the proper exercise of that power. They cannot usurp the inquisitorial office of investigating the good faith of the legislature in the discharge of its duties. The responsibility for such discharge is not to the courts, but to the people, from whom the legislative powers are derived.

That a statute is unjust, oppressive, or in violation of some supposed natural, social or political right not protected by the written constitution, is not sufficient ground for holding it advantage of by those only who have a right to question the validity of the act, and not by strangers."

<sup>1</sup> *Wellington, Petitioner*, 16 Pick. 95. Cf. the *Sinking Fund Cases*, 99 U. S. 700.

<sup>2</sup> *United States vs. Harris*, 106 U. S. 635, Woods, J.

<sup>3</sup> See *Osburn vs. Staley*, 5 W. Va. 85.

stitutional.<sup>1</sup> Nor is it sufficient that a statute violates spirit supposed to pervade the constitution. This spirit is vanescent to be dealt with by the courts. Attempts have recently been made to have acts declared unconstitutional use contrary to the fundamental principles of republican nment. But this reason involves a purely political ques-falling within the province of the legislature. These fun-mental principles are vague and are subject to variation with ges of public policy. The best established general princi-are subject to reasonable exceptions; and the courts are not ied in saying that a certain act is not such an exception.<sup>2</sup> is not necessary, however, to the unconstitutionality of an hat it be in conflict with some express words of the written itution. It is equally void if in conflict with implied pro-ns, or if inconsistent with some provision which confers ower sought to be exercised by the legislature upon some e department of the government, or if there is a failure to ve the forms in accordance with which the authority is to xercised. Where judicial power is granted to the judici-it is impliedly denied to the executive and legislature. The ral assignment of governmental powers to the three depart-s is equivalent to the exclusive grant to each of the whole ority naturally pertaining to its character.

CHARLES B. ELLIOTT.

*Marpless vs Mayor, etc.*, 21 Pa. St. 160-4, Block, C. J. "The rule of law upon bject," says Judge Cooley (Constitutional Limitations, 204), "appears to be xcept where the constitution has imposed limits upon the legislative power, e be considered as practically absolute, whether it operates according to natural or not in any particular case."

In the License Tax Cases, 5 Wall. 469, Chief Justice Chase said: "There are oted fundamental principles of morality and justice, which no legislature is at to disregard, but it is equally undoubted that no court except in the clearest can possibly impute the disregard of these principles to the legislature. This an know nothing of public policy except from the constitution and the laws e course of administration and decision."

## ON CENSUS METHODS.

THE present enumeration of the people of the United States, which will be known as the eleventh census, is the greatest piece of statistical work undertaken in modern times. It will cover sixty-five million people, scattered over more than three million square miles of territory; while the variety of information sought will be more exhaustive, and the proposed analysis of results more elaborate, than anything that has ever been attempted in America or Europe. A census is in itself a matter of profound interest. It is most commonly thought of, perhaps, as a sort of national "taking of stock," to show the progress of the community in population, wealth and well-being. From a scientific point of view, however, it is much more than that. It is an opportunity for sociological observation, which comes only once in ten years and which must be utilized punctually and to its fullest extent; for that particular opportunity will never return. It is like a transit of Venus or a total eclipse of the sun, for the observation of which astronomers make preparations months beforehand and travel thousands of miles. Moreover, each successive census makes one of a series, and if it is defective or distorted, it will, for all time to come, be a disturbing element in comparisons of social growth and development.<sup>1</sup>

The importance of these considerations is often lost sight of in this country, on account of the lack of scientific interest in statistical work and of scientific criticism of the results. In England a somewhat more favorable condition of things seems to

<sup>1</sup> How such an opportunity for sociological observation may be lost, and lost forever, is seen in the failure to take a census in the state of New York in 1885, owing to the quarrel between the governor and the legislature. How such an opportunity may be imperfectly utilized is seen in the defeat of the proposed census law of 1870, by which the ninth census would have been taken according to the improved methods adopted ten years later, — the defeat being due to the personal feeling between Senators Sumner and Conkling. See *The Nation*, vol. x, p. 116.

The Royal Statistical Society of London takes an active part in all such work and numbers among its members many eminent officials.<sup>1</sup> On the continent, the numerous statistical journals are constantly discussing statistical methods and the value of the official returns. The old statistical congresses, formerly met every few years, attempted to bring about a uniform system of classification in different countries; and the International Statistical Institute has undertaken the same.

At the head of the statistical bureaus in Europe are men of the highest scientific attainments, such as Farr, and Giffen in England; Engel, Von Mayr, Becker, Böhm-Borsini and Keleti in Germany and Austria; Bodio in Italy; Bertillon in France, and many others. None but a scientific man could stand the stream of criticism that assails the work; while not only does the community get the best, but science is also advanced.

In this country no such interest is felt. No economic association or statistical society petitions Congress in regard to the scientific scope of the census.<sup>2</sup> Additions are made to the schedule at every Congress, but they are either for political effect or are of momentary interest in a particular question, and they are often forced upon the superintendent without regard to permanent usefulness or to the danger of over-burdening

the society "has since the year 1840 appointed a committee before every census to inquire into the various questions and report to the council. In consequence of the reports of these committees, the society has from time to time made important suggestions to the government of the day, which, while they have disappointed the society, have not effecting all that the society had hoped to achieve, yet have resulted in important improvements. The most notable was in 1840, when the action of the society led the government to withdraw its bill and introduce another, modelled on the suggestions suggested by the council." *Journal of the Royal Statistical Society*, vol. 10, see also vol. 51, p. 516.

A curious fact that at the beginning of the century very considerable interest had been felt in the scientific possibilities of the census. Just before the session of 1800, the American Philosophical Society, of which Thomas Jefferson was president, memorialized Congress recommending a more extended age classification, distinction between natives, foreign-born and aliens, distinction of occupations and professions, etc., the society believing the "duration of life to be longer here and the rate of population more rapid than elsewhere." The Connecticut Academy of Sciences, of which Timothy Dwight was president, petitioned for the same order to "collect materials for a complete view of the natural history of man



the enumerators.<sup>1</sup> No adequate criticism follows the census. Disappointment is often felt at local results, and charges of partiality or even of corruption are freely made, because the returns do not show the population or the industrial activity which the imagination of a particular community had fondly pictured.<sup>2</sup> The census office immediately assumes an attitude of defence, because its integrity is assailed. It learns nothing, because the criticism is on results, not on methods; that is, on its honesty, not on its skill. No new light is thrown on the subject. The superintendent of the next census, if he is of a combative disposition, simply presses forward on the old lines, prepared to endure the abuse which will follow; or, he unconsciously relaxes the severity of his methods, in order to get results that will "satisfy the people."

This sort of criticism, besides being grossly unjust to honest public officials, is in two respects misleading and injurious. In the first place, it entirely ignores the great question of the proper scope of a census. The most important result of experience in census-taking is the knowledge as to what a census can and ought to do, and what it cannot do and ought not to attempt. A distinguished French statistician has enunciated certain dicta on this subject which are well worthy of consideration, both by census officers and by the general public—including our law makers.<sup>3</sup> There are certain facts which, owing to the nature of things or to the particular disposition of a people, cannot be ascertained. Questions touching personal religious belief or opinion, as well as questions in regard to personal indebtedness or private income, are apt to be resented as inquisitorial. Further, there are certain facts which can be ascertained but

and society in this country." Congress paid no attention to either petition. Garfield Committee Report, Second Session, 41st Congress, House Reports, vol. i, no. 3, p. 35.

<sup>1</sup> Scientific criticism would probably reduce rather than increase the number of inquiries. The schedule is much too large and demands detailed answers which are a burden to both the enumerator and the enumerated. See Walker, article Census, *Encyclopædia Britannica*. Yet every superintendent has to fight to keep additional inquiries off the schedule, especially such as would awaken suspicion or antagonism and injure the whole return.

<sup>2</sup> See Tenth Census, vol. ii, Introduction, p. xl.

<sup>3</sup> Levasseur, *La Population Française*, reviewed *infra*.

are not worth knowing; as, for example, the personal of individuals. Finally, there is a great list of things can be known and which would be interesting, but which t worth the expense, chiefly because the money can be spent in other ways. It is not easy to determine whether uiry comes within one of these three categories or not; must be said that, in the present state of scientific and r criticism in this country, our statisticians receive very id in solving the problem. Immersed as they are in prac-ork, it is greatly to their credit that they keep an open such suggestions as come within their reach, and that re ready to profit by them.<sup>1</sup>

he second place, the vulgar criticism lays no stress on ie and labor and skill necessary for scientifically "work-" the statistical material. It demands quick results. It atient of delay. Now, it is of course desirable that the l results of a census, such as the total population and acts that are of immediate administrative value, should le public as soon as possible; and that is always done in nsus. It has sometimes been said that the tenth cen- at least certain parts of it, were unreasonably delayed, to miscalculations as to expense.<sup>2</sup> But the full value of us is obtained only by careful, elaborate and skilful tabu- and analysis of the raw material. This requires time

schedules for the eleventh census show very distinctly with what care the ave studied the experience of the tenth census, of the Massachusetts census and of the Interstate Commerce Commission. The superintendent has shown dom in securing the services of such men as Mr. Wm. C. Hunt, Dr. John S. Mr. Frank R. Williams, Prof. Henry C. Adams, Mr. Geo. K. Holmes and ho have had previous experience or have made special study of the particu- ts entrusted to them. The need of a permanent census office is most keenly r one reflects that it is really only by accident that we enjoy the services of n a second time.

ese delays have, however, been very much exaggerated in popular estimation. ing reports, those which were specially made up of purely statistical matter, th the single exception of that on mortality, published in 1883,—a date nsidering the greater scope of the work, compares favorably with the record vious census. The volumes thus published in 1883 were the two volumes ompendium, and, of the final quarto reports, the following: vol. i, Statistics ation, vol. ii, Statistics of Manufactures; vol. iii, Statistics of Agriculture; tatistics of Transportation. The foregoing volumes comprised nearly every-

and thought. The real work of the census office begins after the schedules are safely housed in Washington. It is like a geological survey. The field work may extend over only a few weeks or months, but years may be necessary to extract the scientific results. Of the difficulties and vexations of this part of the census work the public has, and can have, no just appreciation. But the public should recognize that this is purely scientific work and should treat it accordingly. It should man its census office with the best scientific talent and then patiently await the result. On the face of it, we might even say that a sociological survey of sixty-five million people is a more difficult thing than a geological or a coast survey, and that it requires even more talent, thought and experience. But without being too much discouraged by this lack of scientific interest, — for which popular intelligence and the liberality of the government in meeting the financial needs of the office<sup>1</sup> afford a certain compensation, — let us examine the schedules of the new census, for the purpose of determining what scientific results we can justly expect and demand.

From a scientific point of view a census falls naturally into two parts. The first includes those facts that are of general sociological interest: statistics of population and everything pertaining directly to population — vital statistics, social statistics, *etc.* The second includes those that are of economic interest: statistics of agriculture, manufactures, transportation, wealth, taxation, indebtedness, *etc.* The main facts in regard to population are to be collected, in the coming census, on a family schedule containing some thirty questions, a half dozen of which might much better be omitted.<sup>2</sup> One inquiry de-

thing of a statistical character, with the exception of the mortality statistics before referred to, which it had been usual to publish in a census of the United States; while they contained over and above what had ever before been published in this line far more than the sum of all the omissions." Gen. Francis A. Walker, in *Quarterly Journal of Economics*, vol. ii, p. 141.

<sup>1</sup> See Carroll D. Wright, *The Study of Statistics in Colleges*. Publications of the American Economic Association, vol. iii, p. 6.

<sup>2</sup> The schedule covers the following points: number of families in a dwelling house; number of persons in a family; whether soldier or sailor in the Civil War, or widow of same; relationship to head of family; color; sex; age; conjugal condition; whether

s a distinction between white, black, mulatto, quadroon, octroon. A gentle scepticism may be indulged in as to whether either the individuals or the enumerators will be able to answer the question with the desired degree of refinement. The statistics of conjugal condition at the tenth census were not published; so that here we shall have new information.

The inquiry, whether married within the census year, is intended to give us an approximate marriage-rate, which, in the absence of registration of marriages, will be of great interest, although it will be only an approximation. The inquiry as to number of children will also have great social interest, especially in reference to the comparative fecundity of American and foreign-born women. One of the most interesting features of the United States census has always been the information which it affords us regarding the foreign-born population. In no other country in the world is there such an opportunity to study different races and nationalities living side by side under the same conditions. The eleventh census promises to surpass the tenth in this respect; for it will give us place of birth, parent nativity, number of years in this country and whether naturalized or not.

Besides the usual data concerning profession or occupation, an effort will be made to ascertain the number of months unemployed. How far this inquiry will give us accurate information as to industrial idleness is not easy to determine. The subject is so important that it is perhaps well to make the attempt, although it complicates the schedule by adding a question that cannot be answered without reflection. The old and illiteracy inquiries are an improvement on those of the tenth census, in that they distinguish two degrees of illiteracy, as well as inability to speak English.

The demand to be made on the census in regard to these

1. During census year, mother of how many children, and number of children.  
2. Place of birth; place of birth of father and mother; number of years in United States; naturalization, occupation; months unemployed; attendance at school; able to read, able to write, able to speak English—if not, the language actually spoken, whether diseased, blind, deaf and dumb, crippled, insane, *etc.*;  
3. Prisoner, convict, hopeless child or pauper; four inquiries as to ownership

returns is that they shall be analyzed and correlated in the most careful and exhaustive manner. The inquiries are numerous enough, — too numerous if anything ; and after millions of dollars have been expended in collecting the facts, these facts should be made to yield the greatest results. The number of possible combinations and permutations involved in the answers to these twenty-five or thirty questions is enormous. Take, for instance, our urban population : we shall want to have it analyzed according to age, sex, color and nationality ; as to length of time in this country ; whether naturalized or not ; occupation ; illiteracy ; diseased or defective ; conjugal condition, *etc.* If we take the prisoners, we shall want an equal variety of information. The same is true in regard to the blacks, the Irish, the children in factories, the women of child-bearing age, the miners or engineers. We demand of the census office that it shall work out these results in a careful, scientific spirit, regardless of the conclusions that may be deduced ; and especially that it shall not sacrifice this part of the work to more showy but really less valuable special investigations.

In regard to economic statistics, the demands we can make on the census are equally clear. In the first place, we shall have the general statistics of agriculture, fisheries, manufactures, mining and transportation. The gross figures as to cost of raw material, value of products, *etc.*, must be received with the usual large grain of allowance for the ignorance and indolence of the individuals making the answers, and the carelessness of the enumerators. The results will be approximate only ; in the nature of things they can be nothing else. Scarcely one farmer in a hundred keeps accurate books of his outgo and income, and the annual value of his garden-truck or his buttermilk is an unknown quantity. Among manufacturers there is often an indisposition to reveal the facts in regard to their business, or at least to take the trouble to ascertain them accurately. We

of home or farm and mortgage on same. In case of soldiers and sailors, defectives and delinquents, mortgaged homes or farms and deaths during the year, special schedules are filled out.

emand, therefore, only general results, showing the progress of the community from one decade to another. On the other hand, there are some special inquiries which will be of interest and in regard to which the census office has assumed a very grave responsibility, for the data furnished by it will be used in the solution of some of the most perplexing problems now confronting us. These investigations will be under the charge of special expert agents. And first a word about the proper function of the expert agent in census work. The expert and special agent business was very much overdone at the last census. Elaborate histories and descriptions of agricultural and mechanical processes were published, illustrated with thousands of expensive plans and cuts,—an undertaking which added greatly to the bulk of the volumes and cost much money which ought to have been devoted to working out the statistical data proper. The superintendent of the last census has fully explained why this was done in 1880, and has acknowledged the weakness involved in the procedure, so that we need not pursue the topic further.<sup>1</sup> But the superintendent of the eleventh census should understand that a repetition of this process is not to be tolerated, and he should hold his special agents down to the less exhilarating but more valuable purely statistical work.<sup>2</sup> The object of employing experts in statistical work is to control the returns. Here comes a manufacturer's report, for instance, which has been made out dishonestly or carelessly. The expert agent is the man who has enough knowl-

the Tenth Census was more than an enumeration of population, wealth and industry. It was a survey of the conditions of life, industry and production, such as fail to be of great value to a rapidly growing nation, such as was peculiarly true of the tenth decennial census, . . ." "Much of the work in them [the reports] has been done once for all," etc. "I desire frankly to confess that any noble results were obtained in this way [by special agents] between 1880 and 1890, which otherwise could not have been obtained at all, or only with greatly increased value, this feature of the census law should undergo careful revision in a 'conservative spirit.'" *Quarterly Journal of Economics*, vol. ii, pp. 145, 157. The new superintendent has announced that where industries were fully treated at the tenth census, the only attempt will be to bring the information down to date. Reports, however, which have been or may be selected to receive their first treatment in this respect, will be subject to such notice in the way of historical and philosophical research as may be justified by their importance and relation

edge to detect, from the relation to each other of the different items, capital, raw material, wages, *etc.*, that the return is false, and his business is to secure a correct one. He may labor for weeks in order to straighten out a single table; but in the end that single table will be of more value than any number of colored maps and picturesque diagrams based on the uncorrected returns. The census volumes will not be so "big," but they will be much more trustworthy.

To understand the grave responsibility which the census is incurring, let us consider the bearing of a few of these special investigations.

The census office has been directed to gather the statistics of mortgage indebtedness: to ascertain whether individuals own the farms or homes which they occupy and whether the homes and farms are encumbered or not. This inquiry is already under way, and will reveal the total mortgage indebtedness of the country, how much has been paid off, the rate of interest and the motive for incurring the mortgage (misfortune, purchase money, improvements). The real object of the inquiry is to throw some light on the condition of the occupiers of land in this country; and on the basis of this investigation, all sorts of propositions—for a single tax, for the taxation of mortgages, the relief of farmers, *etc.*—are likely to be made. What we want of the expert agents is not colored maps showing which part of the country is nominally most burdened with mortgages, but the most careful scrutiny of each record and the correction or rejection of all returns that are misleading or absurd.

Again, this census is to make an elaborate inquiry as to capital employed in manufactures (including both credit and cash capital) and as to other items in cost of production, such as rent, insurance and taxes. Capital and cost of production will thus be brought into contrast with the total value of articles produced and of wages paid. These questions involve the to the industrial progress of the nation, due regard being had to the obtainment of the most practical statistical results, combined with the highest considerations of true economy. . . ." Report to secretary of the Interior, Nov. 6, 1889, p. 18. It is safe to say that much of the history and most of the philosophy of the expert agents might be omitted without detriment.

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blem of profits and wages, as well as the minor question of prosperity of protected industries. It will undoubtedly be seen that, for one purpose or another, attempts will be made to distort the returns. But the alteration of one item is very likely to throw it out of harmony with the others, and thus to reveal the fraud to the eye of the expert. It will depend on the honesty and skill of the census officers if the returns are in any degree trustworthy. Other illustrations might be found in the statistics of wages, of railroads, telegraphs and shipping, as well as in many particular industries where the answer to great public questions depends upon correct and tested returns and preparations. But the above will suffice. It will be easy enough to show later whether the census has been equal to its work.

It may be thought, perhaps, that we are making unreasonable demands on officials who, after all, are but men. It is necessary to remember, however, that they have an unexampled opportunity, and that all we demand is technical skill and honest endeavor. The amount of money at their disposal is very generous, —ten times that appropriated by any other government for census purposes. The superintendent is practically uncontrolled in the choice of his assistants and subordinates. His inquiries are forced upon him, but otherwise he has full discretion as to methods of work. If we had a little more of the Roman or the modern Chinese severity in regard to public officials, we might say that if he through wilfulness or carelessness should neglect so great an opportunity, he should pay for it with his head. Without being so bloodthirsty as that, we will say that the men who are about to attach their names to the twentieth census are deliberately handing themselves down, so far as the scientific world is concerned, to eternal credit or discredit. For a census is so connected with the past and the present that it never dies. It is a chapter in the continued record of the nation's progress and, as history at least, it can never lose its interest. It lives forever.

RICHMOND MAYO SMITH.



## THE TAXATION OF CORPORATIONS. I.

**I**N a previous essay<sup>1</sup> we have seen the inadequacy and practical failure of the general property tax. In all ages and in all countries it has been found almost impossible to reach intangible personalty. What has always been a difficult task has become immensely complicated to-day through the growth of the modern corporation. At present the greater portion of personalty in the hands of individuals consists of intangible property, of evidences of ownership in associations, of corporate securities. The first reform of our direct taxation is conceded by all to lie in this direction. Governments are everywhere confronted by the question how to reach the taxable capacity of the holders of these securities, or of the associations themselves. Whom shall we tax and how shall we tax them in order to attain a substantial justice? Perhaps no question in the whole domain of financial science has been answered in a more unsatisfactory or confused way. We have in the United States a chaos of practice—a complete absence of principle. And not only this, but there has thus far been absolutely no comprehensive attempt made, from the standpoint of theory, to evolve order out of the chaos in which the whole subject is plunged.<sup>2</sup>

The first requisite in any scientific investigation of this kind is to have the facts. The facts of corporate taxation in the United States have never been presented in their entirety. And yet, without a knowledge of the existing conditions, any propositions of reform would be utterly valueless. Given the laws, it is necessary next to consider the interpretation put upon them by the courts. But even then we have only the legal, not the economic view. Unfortunately, good law is not always

<sup>1</sup> POLITICAL SCIENCE QUARTERLY, V, 1 (March, 1890).

<sup>2</sup> The only book on this subject is Dietzel, *Die Besteuerung der Aktiengesellschaften in Verbindung mit der Gemeinde-Besteuerung*, 1859. But this has no application at all to American conditions; the distinctions it seeks to make are valueless, and the whole book is immature and antiquated.

d economics. It will be advisable therefore to subject the principles involved to an analysis from the economic point of view. Only after such a comprehensive examination, in the course of which a comparison should be made with the facts of European taxation, will it be possible to reach any conclusions which may lay claim to scientific precision. Only such conclusions, arrived at through such a method, should be made the basis for practical reforms.

What then is the programme of the present series of articles on the taxation of corporations. The great importance of bringing all the facts accurately stated leads me, even at the cost of tediousness, to devote the first essay to an examination of the history and actual condition of the tax, reserving theory and criticism for future consideration.

### I. *Early Taxation of Corporations.*

During the first two decades of this century, banks and insurance companies formed the chief examples of corporations, apart from the numerous turnpike roads and toll bridges. During the twenties and thirties the development of transportation facilities resulted from the creation of many canal and railway companies. And it was not long before the other forms of commercial and industrial enterprise followed in the same path.<sup>1</sup> The early tax laws

The following list contains a statement of all private corporations chartered by New York state and existing at the close of each decade to 1830:

	1800.	1810.	1820.	1830.
Banks . . . . .	5	11	33	64
Insurance cos. . . . .	3	11	31	73
Aqueduct or waterworks cos. . . . .	2	18	25	37
Canal cos. . . . .	0	0	4	6
Commerce and loan cos. . . . .	0	0	0	5
Manufacturing and mining cos. . . . .	2	28	61	108
Steamboat cos. . . . .	0	0	7	22
Railroad cos. . . . .	0	0	0	13
Canal cos. . . . .	0	3	6	30
Toll bridges . . . . .	1	33	61	97
Toll bridges and turnpike cos. . . . .	0	7	21	23
Turnpike roads . . . . .	9	119	246	298

For details can be found in N. Y. Revised Statutes, 1st edition, vol. iii, app.

made no mention of corporations at all. But as the system in vogue throughout all the commonwealths was the general property tax, it was tacitly assumed that the property of artificial as well as of natural persons was equally liable. Corporations were a new institution. In the mind of the legislator, the readiest way to dispose of them was simply to thrust them into the existing methods of taxation, whether they naturally belonged there or not. Our Solons had neither the leisure nor the inclination to study the matter further.

The first commonwealth law which treats of the taxation of corporations in general is the New York law of 1823.<sup>1</sup> This provided that "all incorporated companies receiving a regular income from the employment of their capital" should be considered "persons" liable to the general property tax. They were required to make returns to the county officers of all their property and capital stock. The corporations paid the tax and deducted it from the dividends of stockholders. But they might commute by paying to the treasurer of the county where the corporations transacted business, ten per cent on their "dividends, profits or income," which the legislator evidently presumed to be identical. The taxes were paid by the county officers to the state, and were then credited to the counties in proportion to the amount of stock held within each county, after deducting the state tax.

In 1825 and again in 1828 the system was slightly changed so as to conform more closely to the general property tax. The law<sup>2</sup> was made applicable to "all monied and stock corporations deriving an income or profit from their capital or otherwise." The real estate of these corporations was separately taxed. In addition they paid the property tax on their capital stock paid in or secured to be paid in, deducting the amount paid for real estate and the stock belonging to the state and to literary and charitable institutions. Manufacturing and turnpike companies paid on the cash value, not the amount, of the capital stock. Turnpike, bridge and canal companies, whose "net in-

<sup>1</sup> Laws of 1823, p. 390, §§ 14 and 15, act of April 23.

<sup>2</sup> Revised Statutes (1828) I, 414. For the law of 1825, see act of April 20, § 7.

" did not exceed five per cent of the capital stock paid in, exempted; while manufacturing and marine insurance companies under the same conditions might commute by paying ten per cent of their net income. It will be seen that by this system corporations were divided into different classes, and that the system pursued was the general property tax, with the exceptions that if a corporation had no profits it paid no tax on its profits and that certain classes could in certain cases commute by paying an income tax to the local officials.

This remained the tax system, except for banks and foreign insurance companies, until 1853. In that year<sup>1</sup> the total exemption of non-profit-paying corporations was abolished and all corporations were taxed on the same principle, *i.e.* on their real estate in the amount of the paid-up capital stock in excess of ten per cent of the capital, with the same deductions as above. All corporations, moreover, whose profits did not equal five per cent of the capital stock might commute by paying five per cent of their net annual profits or clear income." It seems that very few of the corporations ever availed themselves of this doubtful privilege. In 1857, therefore, the law was again changed. The principle of commutation was abandoned; and since there was no distinction between profitable and unprofitable companies, so long as personal property was concerned, all corporations were taxed on their realty and on the actual value (not the nominal value) of their capital stock plus the surplus profits or reinvested in excess of ten per cent of the capital. In addition to the previous deductions a further abatement was made for capital invested in taxable shares of other companies. The corporation was then taxed in the same manner as the other personal property and realty of the county.<sup>2</sup> This remained the law of New York, with the exception of some special provisions as to banks and insurance companies, until the recent changes in the taxation of corporations. These however affect only taxation for state purposes, leaving the local taxation still governed by the provisions of the law of 1857.

It appears, then, that the New York system was a tax-

<sup>1</sup> Laws of 1853, chap. 654

<sup>2</sup> Laws of 1857, chap. 456, vol. ii, p. 1.

tion of the real and personal property of corporations by the local assessors, and that the personal property was virtually defined as the capital stock not invested in real estate. In the other commonwealths where corporations were taxed at all, they were simply included in the general property tax; and most of the laws lacked even such provisions as those of the New York statute in reference to the capital stock. A typical enactment of this kind is the Connecticut law of 1826, which simply provided that the personal property of a corporation should be taxed in the place where its principal business was transacted.<sup>1</sup> In Massachusetts, where the first general law was passed in 1832, only the real estate and machinery of corporations were taxed. In lieu of the tax on personalty there was substituted the property tax on the corporate shares in the hands of individuals, a proportionate amount being deducted from each for the part of the capital stock invested in machinery and real estate.<sup>2</sup> But this was still in theory the general property tax. In the other commonwealths, when the corporation was taxed, the shares in the hands of individuals were usually exempt. The only state which from the very outset broke with the principle of the general property tax was Pennsylvania. Her method we shall learn a little further on.

With this one exception, then, the early principle of corporate taxation was the assessment of all real and personal property by the local officials. Corporations, in other words, were taxed by the same method as individuals. This primitive system has been retained up to the present day by many commonwealths for almost all classes of corporations. In eight states, indeed, the constitutions require that corporate property should be taxed in the same manner as that of individuals.<sup>3</sup> The practical defects of such a system, however, have led to numerous changes in many of the progressive states, and the tendency is everywhere away from the original plan.

In my previous essay I showed that the shortcomings of the

<sup>1</sup> Conn. Revised Statutes (1848), sec. 33.

<sup>2</sup> Mass. Laws of 1832, 158, § 2.

<sup>3</sup> Articles and sections of the constitutions are as follows: Ala. xi, 6; Col. x, 10; Fla. xvi, 24; Io. viii, 2; Miss. xii, 13; Nev. viii, 2; Ohio xiii, 4; S. C. xii, 2.

erty tax were five in number: inequality of assessment, failure to reach personality, incentive to dishonesty, regressivity and double taxation. With one exception, these objections are applicable to the taxation of corporations as to that of individuals. To discuss them in detail would simply involve a repetition of what has already been said. The one exception exists in that phase of double taxation connected with the exemption of mortgages. In the case of individuals it was pointed out that to tax both the property and the amount of mortgage debt was theoretically unsound, because the individual's true taxable property consists in his surplus above indebtedness. But in the case of corporations there is a difficulty. The capital stock of corporations represents, in many cases, only a portion of the property. The remainder is represented by the bonded indebtedness. And in this country, at least, it is well known that railroads are built mainly on the proceeds of the mortgage bonds. To exempt the mortgage debt in the case of corporations would hence be inequitable, even from the standpoint of the property tax. In taxing both capital stock and mortgage debt the state is therefore really reaching the true faculty of the corporation. In the case of individuals, indebtedness diminishes the capacity to pay taxes; in the case of corporations, indebtedness often increases that capacity, for it is simply another form of increasing the value and productivity of the property. And it is this correct feeling which has led to the recent official demand in New York and elsewhere for the taxation of corporate loans—a demand that will be fully discussed later on.

With this one exception, then, the defects of the general property tax are equally true in the case of corporations and of individuals, if we understand by general property tax the separate taxation of each particular piece of realty and personality.

There is the less need to discuss its practical defects, for the whole tendency of modern American practice is away from this primitive system. All the facts to be recounted will set the stamp of disapproval upon the original plan. In words of a celebrated report on taxation, this method of

assessing corporations locally on their general property, is "as a system, open to almost every conceivable objection."<sup>1</sup>

## II. *Development of the Corporation Tax.*

As a result of these practical defects many commonwealths have abandoned altogether, or in part, the taxation of corporate property by local officials. The movement away from the original position has taken a threefold direction: 1. The property of transportation companies, especially railroads, has been assessed separately by a special board and according to well-defined rules; 2. Certain classes of corporations, beginning with banks and insurance companies, but gradually including transportation companies and in a few cases other corporations, have been taxed, not on their property, but on certain elements supposed to represent roughly their taxable capacity; 3. All corporations in general have been taxed by a uniform rule, according to principles varying more or less in the different commonwealths.

The first tendency is seen in the case of railroads. Only nine commonwealths<sup>2</sup> still retain the primitive methods of the property tax. In these nine, the regular local assessors still include the railroad property in the county assessment.<sup>3</sup> This practice is confined, with the exception of a single state, to the extreme South and the far West. Twenty-two common-

<sup>1</sup> *Taxation of Railroads and Railroad Securities.* By C. F. Adams, Jr., W. B. Williams and J. H. Oberly. A committee appointed at a convention of state railroad commissioners, *etc.* (1880.) p. 8.

<sup>2</sup> The word commonwealth is here used to include the territories as well as the states proper. As the first session-laws of North and South Dakota were not yet printed at the time of completing the article, I have used the territorial laws of Dakota, thus making in all forty-six commonwealths. For the statistics of receipts from railroads and other corporations, see my monograph on Finance Statistics of the American Commonwealths, published by the American Statistical Association. Disconnected parts of this subdivision of the present essay have already been printed in the monograph. But they have been considerably altered, expanded and brought down to the close of 1889.

<sup>3</sup> La. Laws of 1886, no. 98, § 30; Mont. Laws of 1889, p. 221; Nev. Gen. Stat. §§ 1195-1199; N. M. Comp. Laws, § 2815; Ore. (Hill's) Annot. Laws, §§ 2744-2747;

ths<sup>1</sup> have broken away from the original custom so far as have the railroad property assessed for state purposes not local officials but by a special board.<sup>2</sup> The tax, it is true, is imposed at the usual rate of the general property tax; but on account of the difficulties of local assessments of property have been obviated. In a few of these cases, like California, Colorado and Missouri, the state boards assess the greater part of the property, like road-bed, rolling stock, *etc.*, but leave the remainder to be appraised by the local assessors. In most cases special rules are provided for the assessment of the rolling stock of roads that lie partly without the state, generally in the proportion which the state mileage bears to the whole mileage.

This first reform of railroad taxation has not been completely satisfactory, for reasons to be discussed later. The remaining thirteen commonwealths have therefore abandoned property as the basis of taxation, without reference to the manner of assessment. The methods adopted by them are comprised in the second of the three tendencies.

This second movement away from the property tax has consisted in subjecting special classes of corporations to special taxation on other elements than the general property. It will be necessary to discuss these classes in order.

<sup>1</sup> Pub. Stat. chap. 27, sec. 1; Tenn. Code, § 617; Tex. Rev. Stat. § 4678; Utah Laws, § 2015.

<sup>2</sup> Ia. Code, §§ 494-503; Ariz. Rev. Stat. § 2649; Ark. Digest, §§ 5648-5653; Cal. Code, §§ 3627-3628, 3664-3666; Col. Gen. Stat. § 2847 and Acts of 1889, p. 317; Laws of 1887, c. 1, sec. 45; Ga. Code, Art. 4, § 826, Id. Rev. Stat. § 1463; Ill. Stat. (1889) c. 120, §§ 40-52, 109; Ind. Rev. Stat. §§ 6360-6372; Io. Rev. Stat. 6-2018; Kan. Comp. Laws, c. 107, art. 7; Ky. Gen. Stat. c. 92, art. 3; Mo. Rev. Stat. § 6805-6873; Neb. Comp. Stat. c. 77, §§ 39-40; N. H. Gen. Laws, c. 62, sec. 2; Machinery Act of Mar. 11, 1889, §§ 46-56; O. Rev. Stat. §§ 2770-2776; S. C. Stat. §§ 176-186; Va. Code, c. 51; W. Va. Code, c. 32, § 67; Wy. Rev. Stat. c. 1.

<sup>3</sup> In North Carolina if the road is not taxed on its property, it pays a tax on receipts. Revenue Act of Mar. 11, 1889, § 37.

<sup>4</sup> This is known as the board of railroad commissioners in Arkansas, board of railroad assessors in Kansas, board of assessment for railroads in Alabama, board of assessors and assessors in North Carolina, board of public works in Virginia, West Virginia, and board of equalization in all the remaining cases except Texas, where the comptroller, attorney-general and treasurer act *ex officio* as assessors.



I. *Taxation of Banks.*

The direct taxation of banks dates back to the beginning of this century. During the war with England the federal government imposed certain stamp duties on notes issued or discounted by banks. But the law contained the further provision that the banks might compound for the duty by paying one and a half per cent on the amount of the annual dividends.<sup>1</sup>

The first state law which levied a direct tax on banks was the Georgia act of 1805, which imposed a tax of two and a half per cent on the capital stock and one half of one per cent on the circulation.<sup>2</sup> So also the Massachusetts act of 1812 imposed a tax of one half of one per cent on the amount of the capital stock.<sup>3</sup> A more important law, however, was the Pennsylvania act of 1814. Pennsylvania from the very outset assumed an attitude different from that of the other states. According to this law<sup>4</sup> banks were taxed at the rate of six per cent upon their dividends or net profits; if exempted from the national tax, the rate was to be eight per cent. In 1824 the rate was definitely fixed at eight per cent.<sup>5</sup> A few years later the principle of progressive taxation was introduced. The act of 1834<sup>6</sup> imposed on banks of issue a tax on dividends, which varied from eight to eleven per cent as the dividends were under six or over eight per cent. In 1859 the law was extended to banks of discount and deposit.<sup>7</sup> In 1861 this graduated tax was increased so as to vary from eight per cent if the dividends were six per cent, up to thirty if the dividends were twenty-five.<sup>8</sup> Later on, however, the tax on dividends was replaced by the system now in vogue.<sup>9</sup> Ohio and Virginia were the only other states which began and for some time continued to tax banks on dividends. In Ohio a tax of four per cent on dividends was imposed in 1815.<sup>10</sup> But in 1816 the general banking law obliged the banks

<sup>1</sup> Law of Aug. 2, 1813; U. S. Statutes, III, 77. Repealed by the law of Dec. 23, 1817; Statutes III, 401.

<sup>2</sup> Ga. law of Dec. 4, 1805, p. 20.

<sup>3</sup> Act of June 23, 4 Mass. Laws, p. 317.

<sup>4</sup> Pa. Session Laws, 1813-1814, chap. 98, § 10.

<sup>5</sup> *Ibid.* 1824, chap. 47, § 24.

<sup>6</sup> *Ibid.* 1834, no. 66.

<sup>7</sup> *Ibid.* 1859, no. 523.

<sup>8</sup> *Ibid.* 1861, no. 473.

<sup>9</sup> Act of March 24, 1866.

<sup>10</sup> Act of Feb. 3; Laws of Ohio, vol. 13, p. 132.

t aside profits which at the expiration of the charter would amount to four per cent of the total stock. In 1825 this was changed into a tax of from two to four per cent on dividends.<sup>1</sup> In 1831 the rate was raised to five per cent.<sup>2</sup> In 1845 banks were required to pay in lieu of the tax on dividends, six per cent on the profits, deducting expenses and ascertained losses.<sup>3</sup> Five years later the taxation of profits or dividends was abolished. The banks were henceforth taxed at the general property tax rate on the amount of their capital stock and contingent liabilities.<sup>4</sup> In Virginia the dividends tax began later. In 1846 banks were required to pay one and a quarter per cent on dividends. The rate was gradually changed until during the Civil War it reached seventeen per cent. In 1870 a new system was introduced, based partly on capital stock, partly on income or dividends above \$1500. But in the following year the present method was adopted.<sup>5</sup>

While Pennsylvania and Virginia were the only commonwealths to retain dividends as the basis of taxation, a few other states taxed banks on their capital stock. The Massachusetts tax of 1812, changed in 1828 to a tax of one per cent on the amount of the capital stock actually paid in,<sup>6</sup> remained almost practically without change until the Civil War, when state banks were superseded by the national banks. The tax was in addition to the tax levied on the individual stockholders. Curiously enough, however, the tax applied only to chartered banks, not to the free banks. In Louisiana a tax was imposed on the "stock in trade" of all banks in 1813.<sup>7</sup> In other states, again, a special tax was levied only on the proportion of the capital stock owned by non-residents, as in the first rectifying law of 1830,<sup>8</sup> which imposed a tax of one third of one per cent. In many of the commonwealths, however, the general state taxation of capital stock came much later, as the

<sup>1</sup> Act of Feb. 5.

<sup>2</sup> Act of March 12; Laws of Ohio, vol. 29, p. 302.

<sup>3</sup> Act of Feb. 24; Laws of Ohio, vol. 43, p. 24.

<sup>4</sup> Act of March 23, 1850; Laws of Ohio, vol. 48, p. 88.

<sup>5</sup> A law of Feb. 28, 1845, § 5; Apr. 7, 1853; Mar. 18, 1856; Mar. 28, 1863; Mar. 28, 1870; Mar. 28, 1871.

<sup>6</sup> Mass. Laws of 1828, ch. 96, § 21.

<sup>7</sup> Laws of 1812-13, p. 242. <sup>8</sup> Conn. Public Acts, 1830, chap. 28.

principle of the property tax prevailed. When the capital stock was taxed at all it was simply as representing the personal property, and hence it was taxable locally at the general rate of the property tax. The real estate was taxed separately. Such was the case in New York, where the personal property tax was levied on bank stock and was payable by the corporation. According to the law of 1823, discussed above, the tax was assessed on the par value of the stock. But in 1847 the basis was changed to the actual market value of the stock, without deduction for debts.<sup>1</sup> It is worthy of note that in North Carolina, where the taxation of capital stock came much later, the rate of the tax varied with the dividends.<sup>2</sup>

Since the inception of the national banking system most of the commonwealths have again changed their methods of taxing banks. The history of this change can be well traced in the legislation of New York. According to the laws mentioned above, banks were taxable on so much of their capital stock as represented their personal property. Under these acts the banks claimed exemption for that part of their capital invested in United States bonds. This claim was disallowed by the court of appeals, on the ground that no unfriendly discrimination was hereby shown to the United States as a borrower.<sup>3</sup> In 1862, however, the national government provided by law for the total exemption from state taxation of all stocks, bonds and other securities of the United States.<sup>4</sup> The court of appeals held that this provision applied only to stock and bonds issued after the date of the law, but that all securities issued prior thereto were still taxable according to the state statute.<sup>5</sup> The Supreme Court of the United States reversed this decision, holding that any "stock of the United States constituting a part or the whole of the capital stock of the bank is not subject to state taxation."<sup>6</sup> The legislature then sought to evade this decision by enacting that banks should be taxable "on a valuation equal to the

<sup>1</sup> New York, Laws of 1847, ch. 419, § 4.

<sup>2</sup> N. C. law of Feb. 16, 1859.

<sup>3</sup> *People ex rel. Bank of the Commonwealth vs. Commissioners of Taxes*, 23 N. Y. 192.

<sup>4</sup> Act of Feb. 25, 1862, § 2.

<sup>5</sup> *People ex rel. Bank of Commerce vs. Commissioners of Taxes*, 26 N. Y. 163.

<sup>6</sup> *People vs. Commissioners of Taxes*, 2 Black, 870.

int of their capital stock," with similar deductions and exemptions as in the law of 1857.<sup>1</sup> The court of appeals proceeded this law valid, on the ground that the tax was one on all stock and not on property. But the Supreme Court of the United States again reversed this decision, holding the tax to be one on the property of the bank, which was therefore not deductible for non-taxable investments.<sup>2</sup> In 1864 the national banking act was passed, which permitted the taxation of national bank shares in the hands of individuals, but not at a higher rate than on other moneyed capital.<sup>3</sup> This gave the New York legislature the desired opportunity. In 1865 it passed a law providing that all shares in national banks should be included in the valuation of the personal property of individuals.<sup>4</sup> And the court of appeals held this to be valid.<sup>5</sup> It must be remembered, however, that the state banks were still taxed on their capital. The Supreme Court of the United States now upheld the principle of the taxability of shares, on the ground that a tax on the shares in the hands of individuals was not a tax on the capital of the bank.<sup>6</sup> But it reversed the New York decision on a minor point, namely, that since the capital of state banks invested in national securities was exempt, a tax on the capital is not equivalent to a tax on the shareholders. Hence to tax state banks on their capital and shareholders of national banks on their shares, constitutes a discrimination against national banks. This decision led to the New York law of 1866, which abolished the taxation of bank capital and provided for the taxation of shareholders of both state and national banks in the same way, *i.e.* on the value of shares, with deductions for the capital invested in real

Laws of 1863, chap. 240, April 29.

<sup>2</sup> *Bank Tax Cases*, 2 Wall. 200.

Act of June 3, 1864, § 40 (Revised Statutes, § 5219): "Provided that nothing in this act shall be construed to prevent all the shares in any of said corporations [national banks] held by any person . . . from being included in the valuation of the personal property of such person, . . . but not at a greater rate than is assessed to moneyed capital in the hands of individual citizens of such state, and provided that shares owned by non residents shall be taxed in the city or town where the bank is located and not elsewhere."

<sup>4</sup> Laws of 1865, chap. 97, March 9.

<sup>5</sup> *City of Utica vs. Churchill*, 33 N. Y. 161.

<sup>6</sup> *Vin Allentown vs. Nolan*, 3 Wall. 573.

estate.<sup>1</sup> The banks were no longer taxed on their capital, but were required to retain the dividends from the stockholders until the tax was paid. The Supreme Court sustained this law, holding that no deduction should be made from the value of the shares for any part of the bank's capital which might consist of United States bonds.<sup>2</sup> And later on it decided the state tax on shares to be valid, even if it were collected from the banks.<sup>3</sup> The question then arose whether it was competent for the shareholder to deduct the value of his debts, as was the case in all other personal property. The court of appeals decided in 1867 in the negative, holding that there could be no deduction of debts from the assessment of bank shareholders.<sup>4</sup> This case slumbered for thirteen years. But in 1880 a decision involving this precise question was reversed by the United States Supreme Court on the ground that "the prohibition against the taxation of national bank shares at a greater rate than that imposed upon other moneyed capital could not be evaded by the assessment of equal rates of taxation upon unequal valuations."<sup>5</sup> The consequence was an alteration in the New York law, which now permits the same deductions as in all other taxable property and which provides for the assessment of shares, whether owned by residents or non-residents, at the place where the bank is located.<sup>6</sup>

The result of this development is that bank shareholders pay a large proportion, and in some towns the greater part,<sup>7</sup> of all the taxes on personal property, and that they alone are unable to evade the otherwise so laxly executed tax on personalty.

<sup>1</sup> Laws of 1866, chap. 761. "In making such assessment there shall also be deducted from the value of such shares such sum as is in the same proportion to such value as is the assessed value of the real estate of the bank . . . in which any portion of the capital is invested in which such shares are held to the whole amount of the capital stock of such bank."

<sup>2</sup> *People vs. The Commissioners*, 4 Wall. 244.

<sup>3</sup> *National Bank vs. Commonwealth*, 9 Wall. 353.

<sup>4</sup> *People ex rel. Cagger vs. Dolan*, 36 N. Y. 59.

<sup>5</sup> *People ex rel. Williams vs. Weaver*, 100 U. S. 539.

<sup>6</sup> Laws of 1880, chap. 596, and 1881, chap. 361, practically included in the present law of 1882, chap. 409. See especially §§ 312, 315, 318.

<sup>7</sup> In Albany the banks paid 58 per cent of all taxes on personalty. New York State Assessors' Report, 1878, p. 16.

most recent attempt of the banks to remedy this obvious inequality has been frustrated by a decision of the Supreme Court that the words "moneyed capital," in the revised statute, are practically confined to banks, and that the imposition of a lower rate of taxation on other corporations does not invalidate the bank tax.<sup>1</sup> I do not of course mean to plead that the banks should be treated tenderly or that they should be supported in their attempts to evade taxation. But it is a manifest ingenuity that the bank shareholders almost alone among classes of personalty should be taxed. That they should be taxed out for what is actually heavier taxation, is simply one of the absurd and unjust results of our general property tax. The only inference is the necessity of a comprehensive reform. This system of taxing banks, whose development has just been completed for the state of New York, is now general throughout the country, at least in those commonwealths which do not still cling to the method of the general property tax as applied to corporations. It may be summed up as the separate taxation of real estate plus the taxation of the shares in the hands of individuals, whose tax is generally paid by the bank and withheld from the dividends. Some commonwealths have enacted more detailed provisions to avoid the confusion arising from the taxation of non-residents' stock. The Massachusetts statute, for example, which dates back to 1868, provides that the assessors of a town where a national bank is located, shall omit from the town valuation all shares held by non-residents, and the taxes paid by the bank on these shares shall be credited to the places where the owners reside.<sup>2</sup> In Connecticut the shares of non-residents are not taxed at the usual rate, but the banks themselves pay one per cent on the market value of the shares as a "non-resident stock tax."<sup>3</sup>

<sup>1</sup> *Mercantile Bank vs. The Mayor, etc.*, 129 U. S. 138. As to the national banks, criticism of this decision in the work of C. P. Williams, *The National Banks and State Taxation*, 1887. Cf. also the *Digest of National Bank Cases*, published in the appendix to the Report of the Comptroller of the Currency.

<sup>2</sup> Mass. Session Laws, 1868, chap. 349, contained in Pub. Stat. chap. 11, sec. 33; 13, secs. 12-19. The leading case upholding the validity of the statutes is *Bank of England for Savings vs. City of Boston*, 101 Mass. 575.

<sup>3</sup> Conn. General Statutes, title 76, chap. 244, sec. 3915.

A few commonwealths still tax banks directly on their capital stock at a special rate. In Pennsylvania the shares pay three mills on the dollar. But incorporated banks may elect to pay six mills on the par value of their capital stock in lieu of all other taxation except local taxes on real estate. This is universally done. The three per cent net earnings or income tax applies only to the unincorporated banks without capital stock.<sup>1</sup> In Kentucky, where the banks are taxed on capital and surplus, they waive all rights to a different mode or smaller rate of taxation.<sup>2</sup> In a few cases again we find a mixed system. Thus in Georgia banks are not taxed on their capital, but on their property, in so far as the value of the property is not represented in the market value of the shares. The shares are then taxable in the hands of the shareholders and the bank itself is further taxable on its surplus and undivided profits.<sup>3</sup> Finally, in some of the southern commonwealths, as North Carolina, we find in addition to a tax on bank shares a license tax fixed according to capital or to business transacted.<sup>4</sup> New York has a special law<sup>5</sup> taxing foreign banks at the rate of one half of one per cent on their deposits or moneys used in their business.

There remains the subject of savings banks. Generally these are not incorporated stock companies. In such cases several states, including all New England, tax them on their deposits. The rate ranges from one-quarter to one per cent.<sup>6</sup> In Massachusetts the system came into use in 1862. Prior to this time the deposits were nominally taxable as the personal property of the individual depositors. In other cases, as in New York, such deposits are expressly exempted from taxation.<sup>7</sup> But in New York, savings banks are then taxed on their surplus not

<sup>1</sup> Pa. act of June, 1889, §§ 25-27.

<sup>2</sup> Ky. Laws of 1886, art. ii, § 4.

<sup>3</sup> Ga. Laws of 1888, no. 123, sec. 9. The general question of taxing shareholders or capital stock will be discussed in the following essay.

<sup>4</sup> N. C. Revenue Act of March 11, 1889, sec. 30.

<sup>5</sup> N. Y. Laws of 1882, chap. 409.

<sup>6</sup> Conn. Gen. Stat. sec. 3918; Me. Rev. Stat. title 1, secs. 64-67; Md. Pub. Gen. Laws, art. 81, sec. 86; Mass. Pub. Stat. chap. 13, secs. 20-24; N. H. Gen. Laws, chap. 65, sec. 8; R. I. Pub. Stat. chap. 27, sec. 3; Vt. Rev. Laws, sec. 3593.

<sup>7</sup> N. Y. Laws of 1857, chap. 456.

sted in United States securities, and the tax is declared to ne on the privilege or franchise.<sup>1</sup> In Pennsylvania savings cs are taxed on an entirely different principle, *vis.* three cent on their net earnings or income. But this is true only ey are neither incorporated nor possessed of any capital k. Otherwise they pay like other banks, six mills on the value of their stock.<sup>2</sup> In most of the remaining common- ths there is no special taxation of savings banks, unless they incorporated. In Iowa in such a case the banks pay the l property tax on their paid up capital, but deposits *etc.* are essly exempt.<sup>3</sup>

the matter of bank taxation, therefore, we are beginning ach uniformity except in the case of savings banks. But uniformity, so far as it exists, has been imposed upon the s by the national law. And the solution of the problem, ill appear later on, has not been an entirely satisfactory

## 2. *Taxation of Insurance Companies.*

he next class of corporations to break away from the general erty tax were the insurance companies. At first, however, foreign companies<sup>4</sup> were taxed. The earliest law was that ew York. The act of 1824 provided that foreign fire insur- companies should pay ten per cent on all premiums for erty insured within the state.<sup>5</sup> In 1829 the law was ex- ed to foreign maripe insurance companies.<sup>6</sup> In 1837 the vas reduced to two per cent.<sup>7</sup> Domestic companies were ble on their capital stock, like all other corporations, ac- ing to the general law of 1828. Ohio indeed started out

aws of 1867, chap. 861. This law was repealed in 1875, but the repealing was itself repealed in 1882. Cf. Davies, *Compilation of . . . the System of* on in New York, p. 90.

a. act of June 1, 1880, secs. 27 and 25. <sup>5</sup> Iowa Rev. Stat. § 1815.

he use of the term "foreign corporations" in the American statutes is confus- Generally it designates corporations incorporated in another of the American onwealths. In only a few cases does it refer to non-American states. In this it will be used in the former sense unless otherwise indicated.

New York Laws of 1824, chap. 277. <sup>6</sup> Laws of 1829, p. 515.

<sup>7</sup> Laws of 1837, chap. 30.



with insurance companies as with banks and in 1830 taxed them four per cent on their dividends.<sup>1</sup> But this form of taxation was soon abandoned. In Pennsylvania, where domestic companies were included in the general law of 1840, foreign insurance companies were not specially taxed until 1849, when the law imposed a tax of one per cent on the gross premiums of foreign life insurance companies.<sup>2</sup> In Maryland the custom dates from 1839, when a tax of two per cent was imposed on the premiums received by the agents of foreign insurance companies.<sup>3</sup> In Massachusetts the tax was first levied in 1832. This law is of special interest as the prototype of what is known in several of our commonwealths to-day as the "reciprocal act." The act provided that if any commonwealth taxed the agents of Massachusetts insurance companies, the insurance companies of such commonwealth were to pay one half of one per cent on the whole amount insured by such companies in Massachusetts.<sup>4</sup> The reciprocal acts at present go somewhat further and prescribe that foreign insurance companies are to be taxed at the same rate (if higher than the home rate) that is imposed on home insurance companies by the commonwealth chartering the foreign company. Such reciprocal acts are found at present in Connecticut, Illinois, Maine, Massachusetts and New York.<sup>5</sup> If the tax imposed by the foreign commonwealth is not higher, the foreign companies pay as a rule two per cent on premiums.

This premiums tax on foreign companies was gradually extended to domestic companies, until at present it is found in almost every commonwealth. Only a few of the western states still cling to the original custom of taxing them on their property. Occasionally the tax is known as insurance licenses or insurance fees. It sometimes happens that the companies must pay both fees and taxes.<sup>6</sup> In a few cases the principle of taxing premiums has been applied only to foreign companies, while

<sup>1</sup> Act of Feb. 22; Ohio Laws, vol. 28, p. 43.

<sup>2</sup> Pa. law of Jan. 24, 1849.

<sup>3</sup> Md. Laws of 1839, chap. 24.

<sup>4</sup> Mass. Laws of 1832, 140, § 1.

<sup>5</sup> Conn. Gen. Stat. § 3939; Ill. Rev. Stat. chap. 73, § 29; Me. Rev. Stat. title 1, sec. 63; Mass. Pub. Stat. chap. 13, secs. 30-31; N. Y. Laws of 1875, chap. 60, § 1.

<sup>6</sup> N. C. Revenue Act of 1889, sec. 29.

the companies are still taxed on their property, assets or profits.<sup>1</sup> Several commonwealths again tax foreign companies heavier than home companies. Thus Maryland and Delaware tax the gross receipts of foreign companies only.<sup>2</sup> In Pennsylvania domestic insurance companies (except mutual companies) pay eight tenths of one per cent, and foreign companies two cent on premiums.<sup>3</sup> In New York domestic life insurance companies are exempted from taxation, but foreign companies pay two per cent on premiums.<sup>4</sup> So again, while all land and marine insurance companies pay the same tax for the same purposes, the foreign companies alone pay an additional license tax.<sup>5</sup>

While the premiums tax is under the general tax, we find a number of other instances where taxes are based on different elements. A number of the Southern and a few of the Western states impose license or privilege taxes of a fixed amount. Others combine license and premium taxes. Thus, we find in Virginia the general property tax on a company's realty and personalty, a specific tax of \$200, and an additional tax of one per cent on gross receipts in the year.<sup>6</sup> Massachusetts imposes on life insurance companies a tax of five mills on each thousand dollars insured, as compensation for the state valuation of policies, and a "license tax" of one fourth of one per cent on the net value of all policies. Marine insurance companies pay an excise tax of one per cent on premiums and assessments; but non-American companies pay four per cent on premiums (or two per cent if there is a guarantee fund of \$200,000). Finally, a special life insurance company is taxed on its funds, deducting deposits invested in mortgages.<sup>7</sup> Wherever the reciprocal law exists, as in Connec-

10. Rev. Stat. §§ 6056-6057, N. J. law of April 18, 1884, § 4; Conn. Gen. Stat. 3933-3935; Ala. act of Dec. 11, 1886, sec. 3.

11. Id. Pub. Gen. Laws, art. 23; Del. law of 1885, chap. 423.

12. Act of June 1, 1889, sec. 24.

13. N. Y. Laws of 1853, chap. 463, § 15; 1862, chap. 300, § 5; 1887, chap. 699.

14. Laws of 1886, chap. 679; Laws of 1882, chap. 410, §§ 522-523.

15. Acts of 1883, § 4, chap. 450, sec. 18.

16. Mass. Pub. Stat. chap. 13, secs. 25-28, 30-35; Acts of 1884, chap. 55; Pub. Stat. chap. 119, sec. 18; Acts of 1885, chap. 300. For statistics of these various taxes,

see monograph on Finance Statistics.

ticut and Massachusetts, there is a highly diversified system of insurance taxation.

The tax on premiums is generally levied on gross premiums or on gross receipts. Sometimes, as in Alabama, Illinois, Maine, Missouri and Nebraska, the tax is on net receipts.<sup>1</sup> But in Illinois, Maine and Missouri only foreign companies are subject to this tax. In Indiana we find the seemingly curious distinction that home companies are taxed on net, and foreign companies on gross receipts.<sup>2</sup> But the taxes are really the same, because expenditures, losses paid and return-premiums are deducted, just as in Missouri. So also in Alabama the tax, while nominally on gross, is in reality on net receipts.<sup>3</sup> In Illinois the net receipts of foreign insurance companies are entered as personal property and are included in the general property tax. The companies are then free of all local taxes, except for the benefit of fire departments in cities, which may impose a tax not exceeding ten per cent on gross receipts. In most of the commonwealths the real estate of the companies is also taxable. Only in a few cases, like Maine, is the premiums tax in lieu of all other state taxation.

From the above summary it appears that life insurance companies, especially mutual companies, are in general treated differently from other insurance companies. The reasons are obvious and well founded.

### 3. *Taxation of Railroads.*

A history of the development of railway taxation would occupy a separate essay by itself. It will be possible here to say only a few words about some of the typical commonwealths.

In Pennsylvania, railroads were included in the general tax law of 1840, and were assessed on their personalty and on their dividends.<sup>4</sup> In 1844 the tax on personalty was abandoned.

<sup>1</sup> Ark. Digest, sec. 3829; Ill. Rev. Stat. chap. 73, § 30; Me. Rev. Stat. title 1, sec. 59; Mo. Rev. Stat. sec. 6057; Neb. Comp. Stat. chap. 77, sec. 38.

<sup>2</sup> Ind. Rev. Stat. § 6351.

<sup>3</sup> Ala. act of Dec. 11, 1886, sec. 3.

<sup>4</sup> Pa. Laws of 1840, no. 232.

the general corporation tax on capital and dividends con-  
 ed with some modifications for over two decades.<sup>1</sup> In 1860  
 ecial tonnage tax was levied on transportation companies at  
 rate of two, three and five cents per ton of freight carried,  
 an additional tax of three quarters of one per cent was laid  
 heir gross receipts.<sup>2</sup> The tonnage tax was declared uncon-  
 ditional by the federal courts.<sup>3</sup> As a result all transportation  
 panies were taxed by the act of 1874 only on their capital  
 k, at the rate of nine tenths of a mill for each one per cent  
 ividends. If there were no dividends the tax was to be six  
 s.<sup>4</sup> In 1879 the dividends and earnings taxes were slightly  
 igned, and the law was passed<sup>5</sup> which, with the amendments  
 885 and 1889, is in force to-day. In New York, railroads  
 : subject to the general property tax until 1880, when a law  
 enacted which with some modifications is now in force. In  
 r Jersey, railroads were subject to the general property tax  
 l 1873, when a tax was imposed at the rate of one half of  
 per cent on their cost, equipment and appendages.<sup>6</sup> But  
 e years later the cost tax was abandoned, and a tax at the  
 e rate was imposed on the true value of the roads.<sup>7</sup> This  
 em prevailed until 1884, when the present method was intro-  
 d. In Connecticut, the law requiring certain stock com-  
 es to make returns of the stock owned by individuals was  
 nded to railroads in 1846.<sup>8</sup> Three years later every rail-  
 that had paid a dividend in the preceding year was re-  
 ed to pay one half of one per cent on the market value of  
 shares held by non-residents.<sup>9</sup> But if the railroad was  
 ly out of the state, the tax was to be proportioned to the  
 age in the state. This system worked so well that in 1850  
 as extended to resident stockholders. The tax was made  
 third of one per cent and was in lieu of all other taxes.<sup>10</sup>  
 .862 the rate was increased, but the provision was inserted

Laws of 1844, no. 318, § 33; Laws of 1859, no. 523.

Laws of 1868, no. 69, §§ 7-8.

<sup>3</sup> State Freight Tax Cases, 15 Wall. 232.

Laws of 1874, no. 31.

<sup>5</sup> Laws of 1879, no. 122.

N. J. Public Laws, 1873, chap. 400, p. 112.

*Ibid.* 1876, chap. 101, p. 129.

<sup>8</sup> Conn. Public Acts, 1846, June 17.

Law of 1849

<sup>10</sup> Public Acts, 1850, chap. 58.

that the stock should not be assessed at less than ten per cent of the par value.<sup>1</sup> In 1864 the outlines of the present system were drawn by requiring the companies to add to the valuation of the stock the market value of the funded and floating indebtedness less the cash on hand, and to pay one per cent on this valuation in proportion to the mileage in the state.<sup>2</sup> In 1871 it was provided that if the railroad paid any local tax this might be deducted from the state tax.<sup>3</sup> In 1881 a deduction was made from the taxable valuation for such portion of its debt as was contracted for stock taken in other roads.<sup>4</sup> In 1882 the funded and floating debts and bonds were to be valued at par unless the market value was below par.<sup>5</sup> And in 1887 the present law, with substantially the same provisions, was enacted.

So much for a hasty glimpse at some of the typical forms of development. Let us now study the actually existing chaos. For the remark of the railroad tax committee of 1879 still holds good to-day, that "there is no method of taxation possible to be devised which is not at this time applied to railroad property in some part of this country. A more discouraging example of general confusion could hardly be imagined."<sup>6</sup>

As was stated above, fifteen commonwealths have abandoned property as the basis of the tax. Of these fifteen cases, the majority now assess the railroads on earnings. Seven levy a tax only on gross earnings ranging from one quarter of one to five per cent.<sup>7</sup> Wisconsin, however, combines in some cases a mileage tax with the earnings tax. Washington formerly had a gross earnings law, but this was repealed in 1888.<sup>8</sup> Three commonwealths, Massachusetts, New York and Pennsylvania, include railroads in the general corporation tax. But New York and Pennsylvania levy an additional tax on gross earnings (one

<sup>1</sup> Public Acts, 1862, chap. 55, §§ 5 and 8.

<sup>2</sup> Gen. Stat. (rev. of 1866), p. 717.

<sup>3</sup> Public Acts, 1871, chap. 89.

<sup>4</sup> *Ibid.* 1881, chap. 153.

<sup>5</sup> *Ibid.* 1882, chap. 139.

<sup>6</sup> Taxation of Railroads and Railroad Securities, p. 1.

<sup>7</sup> Dak. Laws of 1889, chap. 107; Me. Rev. Stat. title 1, sec. 42; Md. Pub. Gen. Laws, art. 81, sec. 146; Mich. Gen. Stat. chap. 91, § 3360; Minn. Laws of 1873, chap. 111, extended to all companies by Laws of 1887, chap. 11; Vt. Acts of 1882, no. 1, sec. 12; Wis. Annot. Stat. § 1213.

<sup>8</sup> Wash. law of 1883, repealed by Laws of 1887-88, p. 190.

and eight tenths of one per cent respectively),<sup>1</sup> while Massachusetts also levies a commission tax on gross earnings in proportion to mileage, and in the case of corporations to connect railroads in foreign countries substitutes a tax of one twentieth of one per cent on capital stock.<sup>2</sup> Mississippi taxes roads at a fixed sum (from \$25 to \$125) per mile according to reputed wealth or earning capacity of each road.<sup>3</sup> Delaware has four separate taxes, *viz.* on capital stock (one per cent), earnings (ten per cent), locomotives (\$100 each) and passengers (ten cents each).<sup>4</sup> The companies may pay a gross sum in lieu of the passenger tax. In New Jersey, the law directs the board of assessors to ascertain the value of the main stem, of the other real estate and of the tangible personalty. This would really be a property tax were it not that the assessors are further directed to ascertain the value of the franchise. The whole question of corporate franchise will be deferred to the succeeding paper. But it may be stated here that the New Jersey assessors have endeavored to estimate the franchise by finding sometimes an arbitrary proportion (sixty per cent) of the value of the value of the capital stock and total indebtedness plus the value of the tangible property, sometimes a percentage (twenty per cent) of the gross earnings. The railroads are then taxed one half of one per cent on this entire valuation, both property and franchise, for state purposes. In addition they pay to the state a tax at the local rate on the value of their real estate in each taxing district outside of the main stem. But the portion of the tax, which is really a property tax, cannot exceed one per cent of the value, and is returned by the state to the taxing district.<sup>5</sup> In Connecticut, railroads are required to pay a tax of one per cent on the valuation of their capital stock on the par value (or market value if below par) of their bonded and floating debt above the amount in the sinking fund. If only a part of the railway is in the state, the company pays

<sup>1</sup> N. Y. Laws of 1880, c. 542; 1881, c. 361; Pa. Laws of 1879, c. 122, sec. 7.

<sup>2</sup> Mass. Pub. Stat. chap. 13, secs. 43 and 46; chap. 112, sec. 12.

<sup>3</sup> Miss. Laws of 1884, p. 23.

<sup>4</sup> Del. Laws, vol. 12 (1864), chaps. 458, 485; vol. 13, chap. 392.

<sup>5</sup> N. J. law of March 27, 1888.

on such proportion of the above valuation as the mileage in the state bears to the total mileage. The value and length of such branch lines as are of less than one quarter the average mileage value of the trunk line are omitted.<sup>1</sup>

Among the commonwealths which assess railroads on their gross earnings, six grade the tax according to the age of the road or to the amount of the earnings. The rates per cent are as follows :

Dakota : First five years of operation, 3 ; afterwards, 2.

Minnesota :<sup>2</sup> First three years, 1 ; next seven years, 2 ; afterwards, 3.

Maine (excise tax) : Earnings of \$2250 per mile and under,  $\frac{1}{4}$  of 1 ; thence increasing by  $\frac{1}{4}$  of 1 for every \$750 up to the maximum of  $3\frac{1}{4}$ .

Michigan (specific tax) : \$4000 per mile and under, 2 ; over \$4000, 3.

Vermont : For the first \$2000 per mile, 2 ; the first additional \$1000, 3 ; the next additional \$1000, 4 ; everything above \$4000, 5.

Wisconsin (license fees) : Less than \$1500 per mile, \$5 per mile ; \$1500 to \$3000, the same plus 2 per cent on excess over \$1500 ; \$3000 and upward, 4 per cent. But all railroads upon pile or pontoon bridges are taxed uniformly at 2 per cent.

An important point in the treatment of railroads is the extent to which these new methods of state taxation have superseded local taxation. In four of the fifteen cases, *viz.* Connecticut, Dakota, Minnesota and Washington, the special railroad tax is declared to be in lieu of all other taxation, state or local. This is virtually although not technically true in Connecticut ; for if the real estate not used for railroad purposes is taxable locally, the valuation on which the state tax is based is reduced by the amount of local taxes. In six of the remaining cases, *viz.* Delaware, Maine, Maryland, Massachusetts, Mississippi and New York, the localities may also tax railroad property. But here several points are to be noticed. In Maine, only the buildings of the railroad and the lands and fixtures outside the located right of way are taxable locally.<sup>3</sup> In Massachusetts the railroads are

<sup>1</sup> Conn. Gen. Stat. secs. 3919-3932.

<sup>2</sup> The Minnesota law of 1889, chap. 191, repealed the railroad tax law, leaving the matter to be decided by popular vote at the next election. As the elections are biennial, the proposition has not yet been acted upon.

<sup>3</sup> Me. Rev. Stat. title 1, sec. 4.

able locally only on their real estate (except a belt of land lining the roadbed with the structures connected with it) machinery.<sup>1</sup> But the value of this is deducted from the total valuation for the commonwealth tax. Strictly speaking, Massachusetts thus belongs in the preceding category. In Mississippi, only cities and towns have the privilege of taxing railroad property in general, but all localities may tax that part which is used for railroad purposes. In New York, under the general corporation tax law, the real estate of railroads is taxable for state purposes, and both realty and personalty are taxable for local purposes. But only the value of the realty is deducted from the total valuation of the stock for the commonwealth tax. Locally, in the five remaining cases, *viz.* Michigan, New Jersey, Pennsylvania, Vermont and Wisconsin, the railroads are subject to a local tax only on that part of their property not used for railroad purposes. In New Jersey, this local tax must not be levied with the "tax on the taxing districts" described above, which is in reality also a local tax. In Pennsylvania, all property necessary to the successful operation of the railroad has been held to be a part of the franchise, and therefore not locally taxable.<sup>2</sup> But in Wisconsin, railroad property, even though used for railroad purposes, may be assessed in cities and villages for local improvements only.<sup>3</sup>

Besides these fifteen commonwealths which have broken away from the old property tax, four states which retain this as their main feature add other taxes not based on property. Thus in Alabama we find a "license tax" on gross earnings, to defray the salary of the commission; in North Carolina a privilege tax of one half of one per cent on gross receipts (if only the personal property is taxed) and a franchise tax, at the general rate of the property tax, assessed on the value of the franchise as determined by the board of appraisers; in Texas a tax of one quarter of one per cent on gross passenger earnings; in Virginia a tax on gross earnings, to pay the salary of the com-

<sup>1</sup> *Inhabitants of Worcester vs. Western R. R. Co.*, 4 Metcalf, 566.

<sup>2</sup> *Northampton Co. vs. Lehigh Coal and Navigation Co.*, 75 Pa. 461.

<sup>3</sup> *Wis. Laws of 1882*, chap. 258, sec. 14.



mission, and a tax of one per cent on net income.<sup>1</sup> Some of the southern commonwealths impose special licenses on the railroads. Finally, we find in a few commonwealths special taxes levied on special railroads.<sup>2</sup>

This survey will suffice for a picture of the actual chaos. The theory and criticism must be left to the following essay.

#### 4. *Taxation of Telegraph and Telephone Companies.*

The taxation of telegraph companies has undergone an evolution similar to that of railroads, although not quite so extensive. In the majority of commonwealths, telegraph property is included by the local assessor in the general tax list and pays the regular rate of the general property tax. In a few cases it is separately assessed by special officers, but still pays the general rate. In a few other cases again telegraph companies pay on the value of their property, but at a fixed rate which remains constant from year to year.<sup>3</sup> In nineteen commonwealths, however, telegraph companies pay a special tax based not on property but on other elements. The system of taxing gross receipts prevails in ten cases.<sup>4</sup> Five commonwealths tax the companies on mileage, the rate generally decreasing with each additional wire.<sup>5</sup> Mississippi imposes a privilege tax of \$3000. But if the line is less than one thousand miles long, the tax is one dollar per mile. Tennessee grades the tax according to the population of the towns; Virginia levies a property tax, a one per cent gross earnings tax

<sup>1</sup> Ala. Code, § 1128; N. C. Laws of 1889, chap. 216, sec. 37; chap. 218, sec. 22; Va. Acts of 1883-84, chap. 450, sec. 20; and Code, § 1312.

<sup>2</sup> Del. Laws of 1873, chap. 368, and many subsequent laws referring to other railroads; Ill. Laws of 1851, p. 71, § 18; Pa. Laws of 1861, no. 100, p. 88; N. J. law of March 23, 1865; cf. third annual report of the N. J. state board of assessors for 1886, p. 23; N. C. Revenue Law of March 11, 1889, sec. 37.

<sup>3</sup> Me. Rev. Stat. title 1, sec. 48; N. H. Gen. Laws, chap. 62, sec. 14.

<sup>4</sup> Ga. Laws of 1888, no. 123, sec. 7; Ind. Rev. Stat., Elliott's Supplement (1889), § 2112; Minn. Gen. Stats. vol. ii, chap. 11, § 1313; N. J. law of April 18, 1884, § 4; N. Y. Laws of 1881, chap. 361; N. C. law of March 11, 1889, sec. 39; O. Rev. Stat. § 2778; Pa. law of June 7, 1879, sec. 7; R. I. Pub. Stat. chap. 27, sec. 10; Vt. Rev. Laws, § 3663.

<sup>5</sup> Conn. Laws of 1889, chap. 178; Dak. Acts of 1887, chap. 141; Del. Laws of 1889, chap. 460; Ky. Gen. Stat. chap. 92, art. 4, § 4; Wis. Annot. Stat. § 1216 a.

a license tax of \$250; Alabama, a privilege tax of \$500, either with a tax of one dollar per mile of line.<sup>1</sup> The tendency seems to be toward the mileage tax; for several commonwealths (e.g. Alabama and Connecticut) which formerly levied gross receipts tax have now substituted the tax on mileage. On the other hand Minnesota, which formerly (since 1867) levied mileage tax, changed it in 1887 to a gross receipts tax. This shows the utter lack of uniformity or principle in American taxation.

A special tax on telephone companies has lately been imposed in all but two of the same commonwealths. In ten cases, the rate is the same as that on telegraph companies.<sup>2</sup> In the remaining cases the tax is slightly different. Thus in Connecticut it is twenty-five cents per mile of wire and seventy cents for each telephone transmitter; in Georgia, one dollar for each telephone station or box; in Indiana and Kentucky, one per cent; and one quarter of one per cent respectively on gross receipts; in New Hampshire, the usual property tax; in Mississippi, a tax graded according to the number of subscribers; in Wisconsin, a "license fee" of one and a half per cent on gross receipts; and in Virginia, a general property tax, a license tax of \$100, and a gross earnings tax of one per cent.<sup>3</sup>

##### 5. *Taxation of Express Companies.*

What has been said of telegraph companies applies almost equally well to express companies. Thirteen commonwealths tax them on gross receipts.<sup>4</sup> In Kentucky a license tax of \$500

Miss. Laws of 1888, chap. 3; Tenn. Code, sec. 617; Va. Laws of 1883-84, chap. 450, sec. 24; Ala. Acts of 1889, no. 103.

Ala. Acts of 1889, no. 103; Me. Rev. Stat. title 1, sec. 52; Minn. Gen. Stat. vol. 1, p. 11, § 131 h; N. J. act of April 18, 1884, § 4; N. Y. Laws of 1881, chap. 100, § 1; N. C. law of March 11, 1889, sec. 39; Pa. law of June 7, 1879, sec. 7; R. I. Stat. chap. 27, sec. 10; Vt. Laws of 1882, no. 1, sec. 23.

Tenn. Laws of 1889, chap. 178; Ga. Laws of 1888, no. 123, sec. 7, § 2; Ind. Stat. (1889), § 2116; Ky. Rev. Stat. chap. 92, art. 4, § 5; Miss. Laws of 1880, chap. 100, § 1; Wis. Annot. Stat. § 1222 a; Va. Laws of 1883-84, chap. 450, sec. 24.

Ala. Acts of 1889, no. 103; Conn. Laws of 1889, chap. 221, § 4; Dak. Acts of 1889, chap. 120, Del. Laws of 1889, chap. 461; Ind. Rev. Stat. (1889) § 2108;

to \$1000 is imposed in addition to the local property tax. In some of the other southern commonwealths a license tax of fixed amount is imposed. In Tennessee, this ranges from one to two thousand dollars according to mileage. In Virginia, express companies pay not only the general property tax, but also a tax of one per cent on income. In New Hampshire, they may pay, in lieu of the "license" on gross receipts, a fixed sum of five dollars per mile. In Ohio, they are taxed on gross receipts at the general rate of the property tax.<sup>1</sup>

From the fact that the large express companies are generally unincorporated, the question has frequently arisen whether they are liable to the corporation tax. In Vermont and Pennsylvania all persons or joint stock companies are expressly included in the law. In New Jersey the law applies only to corporations, to the manifest benefit of the unincorporated companies. In New York the liability of the express companies has recently been affirmed by the court.<sup>2</sup> There is of course no good reason for their exemption.

#### 6. *Taxation of Palace Car Companies.*

The special tax on these companies, which is found in a few commonwealths, is based sometimes on gross receipts, sometimes on other elements. Thus we find in Alabama a privilege tax of five hundred dollars, together with one dollar per mile of track over which the sleeping car company operates; in Arkansas, a "public highway tax" of three dollars per mile; in Dakota, a tax of three per cent on gross receipts; in Georgia and Iowa, a tax at the usual rate on non-resident companies, proportioned to the number of cars and miles run; in Indiana, a tax of ten per cent on gross receipts; in Michigan a three per

Me. Rev. Stat. title 1, sec. 55; N. H. Gen. Laws, chap. 63, § 1; N. J. act of April 18, 1884, § 4; N. Y. Laws of 1881, chap. 361; N. C. act of March 11, 1889, sec. 39; Pa. act of June 7, 1879, sec. 7; R. I. Pub. Stat. chap. 27, sec. 11; Vt. Laws of 1882, no. 1.

<sup>1</sup> Ky. Rev. Stat. chap. 92, art. 4, § 6; Tenn. Code, sec. 617; Va. act of 1883-84, chap. 450, sec. 22; O. Rev. Stat. sec. 2778.

<sup>2</sup> *People ex rel. U. S. Express Co. vs. Wemple*. Decided in 1889.

and in New Jersey a two per cent gross receipts tax on ice, parlor and sleeping cars; in New York a one half of one cent and in Pennsylvania an eight tenths of one per cent gross receipts tax on palace and sleeping car companies, in addition to the general corporation tax.<sup>1</sup> In some of the southern monarchies a license or privilege tax of stated amount is imposed.<sup>2</sup> In Virginia, however, the companies are taxed on their property at the usual rate and also one per cent on their income.<sup>3</sup> In some cases railroad companies are taxed for their sleeping cars, but may then recoup from the sleeping car companies.<sup>4</sup>

#### 7. *Miscellaneous Taxes on Corporations.*

In addition to the taxes already mentioned, a few commonwealths levy taxes on other specified corporations. These are mostly of very recent date. In order to make the survey complete they will be noted here. We find in Alabama a tax of one per cent on the gross receipts of cotton pickeries and seed-mills; and on the gross income of gas-works, water-works, electric-light companies, ferries, toll-bridges, public mills and saw-mills, and cotton compresses. But as the tax is levied only after deducting the expenses for carrying on such business, the tax is really on net income. In Connecticut there is a tax of one per cent on the gross receipts of rolling-stock companies. In Kentucky we find a tax on the stock of turnpike companies at the rate of seven per cent on net dividends; also a tax on street-car companies and street railroads, as well as a "tax on city corporations," which is in reality simply a tax on coffee houses in Frankfort. In Louisiana there is a tax on the gross receipts of horse railroads. In Maine there is a similar tax, but a graduated scale of one tenth of one per cent for every hundred dollars. In Massachusetts we find a tax of one

<sup>1</sup> Ala. Acts of 1889, no. 103; Ark. Laws of 1887, no. 128; Dak. Acts of 1889, no. 120; Ga. Laws of 1888, no. 123, sec. 8, § 3; Ind. Rev. Stat. (1889) § 2120; Nev. Stat. §§ 2023-2025; Mich. Gen. Stat. § 1228; N. J. act of April 18, 1884, § 1; N. Y. Laws of 1881, chap. 361; Pa. act of June 7, 1879, sec. 7.

<sup>2</sup> Penn. Code, sec. 617.

<sup>3</sup> Va. Laws of 1883-84, chap. 450, sec. 22.

<sup>4</sup> Io. Rev. Stat. § 6899; Ga. Laws of 1889, p. 34.

twentieth of one per cent on the capital stock of mining companies (for the purpose of coal mining or extracting carbonaceous oils). If the company is incorporated in the state the tax is four per cent on the net profits. We find in Massachusetts also, a "gas commissioners tax" on the gross earnings of gas companies; a "gas-light companies tax" on the appraised valuation of their property to defray the expenses of the gas-meter inspectors; and a tax of one quarter of one per cent on the monthly dues (excluding fines and premiums) paid by shareholders of corporations, saving-fund and loan associations. In Michigan there is a special tax on mining, smelting and refining companies of seventy-five cents per ton of copper, one cent per ton of iron and five mills per ton of coal obtained. But the real estate of mining companies is taxed only on the excess over six hundred and forty acres. There is also a tax of two per cent on the gross receipts of special freight lines or car-loaning companies, and a like tax on the gross receipts of surety and guaranty companies. In New Hampshire there is a tax of one per cent on the stock of building and loan associations, and a like tax on the capital and deposits of trust companies and similar corporations. In New Jersey there is a tax of eight tenths of one per cent on the gross receipts of oil or pipe-line companies, and a tax on gas and electric-light companies of one half of one per cent on gross receipts and five per cent on dividends in excess of four per cent. In New York we find a "pool tax" on racing associations, — five per cent of the gross receipts for admission. In Pennsylvania, electric-light, street passenger railway, pipe-line, slack water navigation, canal or other transportation companies pay eight tenths of one per cent on gross receipts, in addition to the general corporation tax. In Rhode Island there is a tax of one quarter of one per cent on the deposits of trust companies. In Vermont we find a tax of one per cent on the deposits of trust companies, and of two per cent on the gross receipts of steamboat, car and transportation companies (other than railroads) incorporated in the state. In Virginia, steamship companies and transportation companies in general are taxed on their property and also at the rate of one per cent on their

me.<sup>1</sup> Finally, in some of the southern commonwealths, these fees or "privileges" are imposed on corporations following certain specified lines of business.

The third movement away from the property tax noted above page 275 has been the introduction of a tax applicable to all corporations in general. We come thus to

### 8. *The General Corporation Tax.*

Here again Pennsylvania took the lead. In that state the tax is far older than might be imagined from its recent introduction into other commonwealths. We have already seen that in 1824 Pennsylvania imposed a tax on the net dividends of corporations.<sup>2</sup> In 1836 the tax was extended to iron companies, at the rate of eight per cent on all dividends exceeding six per cent.<sup>3</sup> This provision can be seen the germ of the later laws. The general corporation tax was imposed in 1840. The law provided that "banks and all corporations whatever" which received a dividend of one per cent, should pay "in addition to present taxes" one half mill for each one per cent of dividend.<sup>4</sup> In 1844, however, an act was passed which sketched in and outlined the path of future development. According to the new law all domestic corporations which make or declare a dividend or profit of at least six per cent, pay a tax on capital stock of one half mill for each one per cent of dividend. But if the dividend is less than six per cent, the tax is three mills on each dollar.<sup>4</sup> This law continued until the act of 1859. Thenceforward the three mill tax was paid only if no dividend was declared. In case of any dividend (not as before a six per cent dividend) the tax was one half mill on the capital stock for each

1. La. Code, sec. 454, § 5; Ky. Rev. Stat. chap. 92, art. 4, §§ 1, 3; Me. Rev. Stat. chap. 106, sec. 47; Mass. Pub. Stat. chap. 13, secs. 24, 43 and chap. 61, sec. 7; also Acts of 1885, chap. 106, sec. 4, and 1885, chap. 314; Mich. Gen. Stat. §§ 1187, 1226, 1229; N. H. Laws of 1885, no. 195; N. H. Laws of 1889, chaps. 12 and 55; N. J. law of 1884, § 2; N. Y. Laws of 1887, chap. 479; Pa. law of June 1, 1889, sec. 23; Va. Pub. Stat. chap. 27, sec. 4; Vt. Acts of 1882, no. 1, sec. 25; Va. Laws of 1883-1884, chap. 450, sec. 22.

<sup>2</sup> Laws of 1836, no. 194.

Laws of 1840, no. 232, p. 612.

<sup>4</sup> Laws of 1844, no. 318, § 33.

one per cent of dividend.<sup>1</sup> In 1864 it was provided that corporations not paying to the state a tax upon dividends should pay three per cent on net earnings.<sup>2</sup> The consolidated act of 1868 excepted from the general corporation tax only banks, savings institutions and foreign insurance companies (all of which were separately taxed), but imposed a tax of three per cent on the net earnings or income of all corporations, except those liable to the tonnage tax, *i.e.* the transportation companies.<sup>3</sup>

The important feature of the law of 1868, however, was that the corporation tax was now made applicable to all companies incorporated or doing business in the state, *i.e.* to foreign as well as to domestic corporations. Only from 1868, therefore, was the Pennsylvania tax a general corporation tax. The general law of 1874 made no change except in respect to transportation companies, as mentioned above,<sup>4</sup> and with the further exception that coal companies were to pay a franchise tax of three cents per ton transported.<sup>5</sup> In 1879 the line of division in the tax was again drawn at dividends of six per cent. That is, the principle of the law of 1859 was abandoned and that of 1844 re-instituted. Limited partnerships, except those organized for manufacturing or mercantile purposes, were put on the same footing as corporations, and the tonnage tax on coal companies was limited to 1881, after which it was to cease. A loan tax of four per cent was imposed, applicable also to the bonds of corporations.<sup>6</sup> In 1885 this tax was reduced to three per cent,<sup>7</sup> and in 1889 the present amendments were adopted.

Under the law as it now stands in Pennsylvania,<sup>8</sup> the "tax on corporation stock" applies to all corporations, joint stock associations and limited partnerships, except banks and savings institutions, foreign insurance companies, and manufacturing companies organized exclusively for manufacturing purposes and actually carrying on manufacturing within the state. But corporations engaged in the manufacture of malt and spirituous or

<sup>1</sup> Laws of 1859, no. 523, p. 529.

<sup>2</sup> Laws of 1868, no. 69, §§ 4 and 6.

<sup>3</sup> Laws of 1874, no. 31.

<sup>4</sup> Law of June 30, 1885.

<sup>5</sup> Laws of 1864, p. 218.

<sup>6</sup> Page 288.

<sup>7</sup> Law of June 7, 1879.

<sup>8</sup> Law of June 1, 1889.

is liquors, and such as enjoy and exercise the right of emigration, are not included in this exception. The rate is half mill for each one per cent of dividend, if dividends amount to six per cent, and three mills when dividends are less than six per cent. If any profit has been added to the sinking fund it is treated as if it had been devoted to dividends, unless it is set apart expressly for the payment of debts. In addition to the tax on corporation stock, there is a nominal tax of three per cent on the net earnings of private bankers and brokers, incorporated banks and all corporations except those liable to the previous tax or to the tax on gross receipts. The only corporations which would be liable under this provision are banks and manufacturing corporations. But manufacturing corporations, with the exceptions just noted as liable to the tax on corporation stock, are now expressly exempt from all taxation; banks, by electing to pay six mills on the par value of their capital stock, may be exempt from all other taxation except on real estate. Thus the net earnings tax does not apply to corporations at all. Finally, the "tax on loans" exacts three mills on the dollar of all mortgages, debts, shares of stock in corporations, trust companies, *etc.*, and on all public loans (except those of Pennsylvania and the United States). It has been judicially decided that the tax is unconstitutional when applied to mortgages held by or in the hands of corporations.<sup>1</sup> This decision has lately been formulated into the law that corporations and corporations liable to the capital stock tax shall not be required to pay any further tax on mortgages, bonds or other securities belonging to them and which constitute any part of their assets included within the appraised value of their capital stock. But corporations which hold these bonds in a fiduciary capacity they are liable.<sup>2</sup> On the other hand so much of the tax as is imposed on the bonds made by corporations, *i.e.* on corporate obligations, has been upheld by the courts.<sup>3</sup> The treasurers of corporations are required to pay the tax on all bonds or obligations issued by the corporations which are held by residents, and then deduct the

<sup>1</sup> Appeal and Sanderson's Appeal, 112 Pa. Stat. 337.

<sup>2</sup> Act of 1889, § 21.

<sup>3</sup> Commonwealth v. Delaware Division Canal Co., 123 Pa. 594.



tax from the amount of interest due. It is to be noticed that Pennsylvania taxes public as well as private corporations.

In addition to Pennsylvania the general corporation tax is found only in New York; although in Massachusetts and New Jersey there is a general tax on domestic corporations, and in three other cases, *viz.*, Alabama, Illinois and Maryland, there is what may be called in one sense a general tax on corporations.

In New York the general corporation tax came later. Not until 1880 was a law passed which was based on the Pennsylvania act. The tax<sup>1</sup> is declared to be a tax on the corporate franchise of all corporations, joint stock companies or associations, except savings banks and institutions for savings, fire and marine insurance companies, banks, foreign insurance and banking companies, agricultural and horticultural companies, and manufacturing and mining corporations wholly engaged in carrying on manufacturing or mining in the state. But gas and trust companies, and electric or steam heating, lighting and power companies are not included in the exception; while banks, fire and marine insurance companies, and foreign insurance companies, are separately taxed. So that the only companies exempted from taxation are domestic life insurance companies, agricultural and horticultural companies, and manufacturing and mining corporations with the exceptions noted. The rate is just one half that of the Pennsylvania tax, *i.e.* one quarter mill upon each dollar of the capital stock for each one per cent of dividends which amount to at least six per cent. For less dividends the tax is one and a half mills. An exception is made in the case of hotel companies. If their dividends are less than six per cent, the tax is assessed on the excess of the capital stock over the assessed valuation of the real estate.<sup>2</sup> Corporations subject to the tax are exempted from all further state taxation except on their real estate. But they are liable to local taxation on their whole property, both real and personal, according to the primitive methods. The additional taxes on

<sup>1</sup> Laws of 1880, chap. 542: amended by laws of 1881, chap. 361; 1882, chap. 151; 1884, chap. 353; 1885, chaps. 359 and 501; 1886, chap. 679; 1889, chap. 353.

<sup>2</sup> Laws of 1886, chap. 592.

corporations have been described under the appropriate heading.

Massachusetts the general corporation tax dates from

In 1863 indeed, a law was passed taxing dividends paid to non-resident stockholders.<sup>1</sup> But this was pronounced unconstitutional,<sup>2</sup> and was replaced by the law now in force.<sup>3</sup> The tax is declared to be levied on the corporate franchise of all domestic corporations except banks and coal and mining companies, which are separately provided for. The tax is imposed on the market value of the shares of the capital stock, deducting the value of the real estate and machinery, which are locally taxable. The rate is determined by an apportionment of the whole amount to be levied by property taxes in the commonwealth during the year, to the aggregate valuation of all the towns and cities for the preceding year. Every municipality is then credited with the portion of the tax represented by the number of shares held by residents of that place. The commonwealth then retains that proportion of the tax which corresponds to the stock held by non-residents. In the case of railroads, which are also taxed under this general law, only such portion of the valuation of the road is taken as is proportional to the length of that part of the road lying within the commonwealth. A very important point to be noticed is that in Massachusetts the tax applies only to domestic corporations, not to foreign corporations as in New Jersey and Pennsylvania. Foreign corporations are taxed only on their property locally owned. Massachusetts therefore has actually no general corporation tax.

New Jersey the tax on "miscellaneous corporations" dates from 1884 and is described as a "license for the corporate franchise." It applies to all corporations except railroads and canals (both of which are taxed separately), banks, religious, charitable or educational associations, and manufacturing or mining companies which carry on business in the state. Certain classes of corporations, as stated above, are taxed under this law in a

<sup>1</sup> Mass. Laws of 1863, chap. 236.

<sup>2</sup> 11 Allen, 268.

<sup>3</sup> Laws of 1864, chap. 208; 1865, chap. 283. Cf. Public Stat. chap. 13.

special manner, *i.e.* on receipts, premiums and dividends. These, it will be remembered, are telegraph, telephone, cable, express, gas, electric-light, insurance, oil and pipe-line companies. All others pay a yearly "license fee" or tax of one tenth of one per cent on the capital stock.<sup>1</sup> Here again the tax applies only to domestic corporations, except in the case of insurance companies. It is to be borne in mind that railroad companies are not included in this tax on miscellaneous corporations.

In Maryland the "tax on incorporated institutions" dates in one sense from 1841. In that year all domestic corporations which declared dividends were required to return the stock owned by non-residents, and to pay the state general property tax thereon to the collector of the place where the corporation or its chief office was situate.<sup>2</sup> In 1842 this obligation was extended to resident stock.<sup>3</sup> In 1847 the corporations were required to pay the state tax on capital stock, whether or not they had earned dividends. The county tax was still collected from the shareholder.<sup>4</sup> Early in the seventies the system was slightly changed;<sup>5</sup> in 1878 the present method was introduced, and the office of tax commissioner created. The tax is levied on the capital stock or, if there be none, on the property and assets of all corporations incorporated or doing business in the state, and of all joint stock companies doing business in the state, except steam railroads and savings institutions, both of which are taxed separately. Deductions are made from this valuation for the assessed value of real property (separately taxed), for the capital invested in property which already pays taxes, for the non-taxable securities held and, in the case of building associations, for mortgages on taxable property. The rate is the common rate of the general property tax. The corporations pay on only so much of the stock as is owned by residents of the state.<sup>6</sup> In addition to this tax, corporations are also required to pay the general property tax on all interest-

<sup>1</sup> N. J. act of April 18, 1884.      <sup>2</sup> Md. Laws of 1841, chap. 23, § 17.

<sup>3</sup> Laws of 1842, chap. 281; Supplement, 1843, chap. 289.

<sup>4</sup> Laws of 1847, chap. 266, § 5.

<sup>5</sup> Laws of 1872, chap. 90; 1874, chap. 483, §§ 83-87, 145-148.

<sup>6</sup> Md. Pub. Gen. Laws, art. 81, secs. 84-85, 141-144.

ing bonds, certificates or evidences of debt, owned by residents. The tax is deducted from the interest due the holders. This law dates from 1847, but is now applicable to such of the bonds as are owned by residents of the state.<sup>1</sup>

corporation taxes in Maryland therefore have only a very limited scope.

In Illinois all corporations except railroads (which are separately taxed) and manufacturing, newspaper and stock-holding companies are assessed on the excess of their capital stock and surplus over and above the value of their tangible property. But the capital stock tax is regarded as a part of the general property tax, and figures among its receipts.<sup>2</sup>

Finally, in Alabama there is a tax at the rate of the property on the capital stock of all corporations, companies or associations, except such stock as is invested in property already taxed. As a result of this exception the proceeds are very insignificant. There is also a tax, dating from 1866, on the dividends of all corporations doing business in the state. The dividends, however, are simply classed as personal property and so the tax yields almost nothing.<sup>3</sup> There was formerly also a tax on the incomes of corporations.<sup>4</sup> But this seems to have been rarely assessed.

It may also be mentioned that Virginia had a general corporation tax for a short period. In 1843 a tax of two and a half per cent was imposed on the dividends of all corporations, except as to the stock held outside of the state. In 1846 the tax was repealed, and was then allowed to disappear. During the Civil War a tax was imposed on steamboat companies and "companies of a similar character." This law defined capital as stock subscribed, money deposited, and bonds, certificates and

<sup>1</sup>Id. Pub. Gen. Laws; art. 81, secs. 87-88. Cf. Laws of 1847, chap. 266, § 9.

<sup>2</sup>Ill. Rev. Stat. (1889), chap. 120, sec. 3, § 4.

<sup>3</sup>Ala. Code, sec. 453, §§ 9, 12. Cf. law of Feb. 22, 1866, § 2; Dec. 31, 1868, March 6, 1876, chap. 3, § 5.

<sup>4</sup>Laws of Feb. 19, 1867 (sec. 3), March 19, 1875 (sec. 11) and March 6, 1876

<sup>5</sup>4) imposed an income tax on persons, which was held to include corporations. Ala. 277. The tax was abolished in 1884.

other evidences of debt. The tax was thus really one on stock plus total indebtedness.<sup>1</sup>

We see then that only in Pennsylvania and New York is there a general corporation tax applicable to foreign as well as to domestic corporations. In Maryland the corporation tax, although nominally applicable to foreign corporations, is in reality levied almost exclusively on domestic companies. In the other cases, the law applies in terms only to domestic corporations. In Maryland and Massachusetts, again, the tax is really a general property tax on shares of stock, paid by the corporation. The important questions that have arisen in connection with these points will be discussed in the following essay.

A mistake often made is that of confounding with the corporation tax what may be called *the tax on corporate charters*. This is in reality a license fee charged for the privilege of incorporation or of increasing the capital stock. It is generally a lump sum proportioned to the amount of the capital or a percentage on the stock. The tax is found in nine commonwealths, most of which already possess a corporation tax proper. In Connecticut it is called the "tax on corporate franchise," although it is quite unlike the corporate franchise taxes in other commonwealths. It applies only to foreign corporations seeking a charter in the state. In Maine it is called the "tax on new corporations;" in Missouri, the "corporation tax" or the "tax on corporations incorporating;" in New Hampshire, "charter fees;" in New Jersey, the "tax from certificates of incorporation;" in New York, the "organization of corporations tax," although payable also on subsequent increase of the capital stock; in Pennsylvania and Rhode Island, the "bonus on charters;" in West Virginia, "license tax on charters and certificates of corporations." Here, however, it is paid annually.<sup>2</sup>

<sup>1</sup> Va. Laws of 1842-43, p. 10, § 11; 1845-46, p. 7, § 5; law of Mar. 28, 1865, § 6.

<sup>2</sup> Conn. Gen. Stat. secs. 1912-1916; Me. Rev. Stat. chap. 48, sec. 18, and Public Laws of 1887, chap. 90; Mo. Const. art. 10, sec. 21, also Rev. Stat. sec. 2493; N. H. Gen. Laws, chap. 13, sec. 5; N. J. Public Laws of 1883, p. 62 and Supplement Rev. Stat. p. 149; N. Y. Laws of 1886, chap. 143; Pa. Laws of 1868, sec. 15, p. 113; Laws of 1874, sec. 44, p. 107; R. I. Pub. Stat. chap. 27, sec. 15; W. Va. Code, chap. 32, secs. 86-92, as amended by Laws of 1887, chap. 29.

these taxes have really nothing in common with the corporation tax property taxes.

### III *Principles of the Tax.*

The summary just presented is supposed to be exhaustive. In all events it is ample to show the chaos of principle in which the whole subject is involved. An analysis of the facts discloses less than thirteen main methods of taxing corporations, notwithstanding the various combinations of method which are practised in some states. The bases on which the tax is assessed are as follows:

1. *Value of the property, i.e. the realty plus the visible and invisible personalty.* This was originally the universal method and it is still the practice in the great majority of cases.
2. *Cost of the property.* This was the general rule as to all railroad companies in New Jersey from 1873 to 1876, and is still the rule in isolated cases. The same rule prevails to-day in New York in the local taxation of telegraph companies.<sup>1</sup>
3. *Capital stock at par value.* This is true of the general corporation law in New Jersey; of mining companies in Massachusetts; and of banks and savings institutions in Pennsylvania.
4. *Capital stock at market value.* This is true of the general corporation law in Massachusetts, and of corporations in New York and Pennsylvania where the dividends are less than six per cent. It was also true of railroads in Connecticut between 1849 and 1864.
5. *Capital stock plus bonded debt at market value.* This is true of all corporations in Maryland (with certain restrictions) and of railroads in Georgia and Illinois. In the case of railroads in New Jersey and of other corporations in Illinois, only the surplus plus of this valuation over the value of the tangible property made the basis of the tax. In Maryland only the surplus over the value of the real estate is taxable as capital stock.

<sup>1</sup> N. Y. Laws of 1853, chap. 597.

6. *Capital stock plus total debt, both funded and floating.* This is true of railroads in Connecticut. It was true of steamboat companies and similar corporations in Virginia during the Civil War.

7. *Bonded debt or loans.* This was true of railroads and canals in Virginia from 1872 to 1874.<sup>1</sup> It is true now of all corporations in Maryland and Pennsylvania. It is urgently recommended by the comptroller of New York. In all these cases, however, it is only supplementary to the tax on capital stock.

8. *Business transacted.* This is true in several states of savings banks taxed on their deposits; of foreign banks in New York; of trust companies in New Hampshire and Vermont taxed on deposits; of insurance companies in Connecticut and Massachusetts taxed on the amount insured; of telephone companies in Connecticut and Georgia taxed on the number of telephone transmitters; of sleeping car companies in Georgia and Iowa taxed according to the number and mileage of cars; of railroads in Delaware taxed on the number of locomotives and passengers; of mining and smelting companies in Michigan taxed on tonnage. It was also true in Pennsylvania of railroads from 1868 to 1874, and of coal companies from 1868 to 1881, taxed on tonnage; and of boom companies from 1870 to 1889 taxed on the number of logs rafted.<sup>2</sup>

9. *Gross earnings.* This is true in most of the states of insurance companies taxed on gross premiums, and of transportation and other companies in a very large number of cases.

10. *Dividends.* This is true of gas and electric-light companies in New Jersey, of turnpike companies in Kentucky and of corporations in general in Alabama. It was formerly true of banks and iron companies in Pennsylvania, and of banks and insurance companies in Ohio and Virginia.

11. *Capital stock according to dividends.* This is true of all corporations in New York and Pennsylvania, when the dividends

<sup>1</sup> Va. Laws of 1872, chap. 385, § 8.

<sup>2</sup> One hundred dollars per hundred thousand logs rafted. Law of April 6, 1870, repealed by law of June 1, 1889.

at least six per cent. It was formerly true of banks in North Carolina.

2. *Net earnings.* This is true of railroads in Delaware and Virginia; of insurance companies in Alabama, Indiana, Maine and Nebraska; of foreign insurance companies in Illinois, Mississippi and New Jersey; of express and sleeping car companies in Virginia; of mining companies in Massachusetts; of savings banks without capital stock in Pennsylvania; and of gas-works, water-works, electric-light companies, ferries, toll-bridges, public houses and gins, and cotton compresses in Alabama.

3. *Franchise.* This is true of a large number of cases. But the term franchise denotes nothing definite, as we shall see, and the value of the franchise is measured by each one of the preceding twelve tests except that of property.

So much for the existing confusion. It is plain that we are groping in the dark and that no one method has yet commanded itself to the American sense of justice and expediency. In the next paper we shall learn the judicial interpretation put upon these various methods, and shall attempt to analyze the situation from the economic point of view. That some change is operative seems evident. Precisely what the change should be can be ascertained only after the most careful consideration. This is the complicated problem that confronts us.

EDWIN R. A. SELIGMAN.



## WELLS' RECENT ECONOMIC CHANGES.

**I**N the March number of the *POLITICAL SCIENCE QUARTERLY* Professor Patten of the Wharton School of Finance and Economy criticised what he considered serious errors in logical method in Mr. David A. Wells' *Recent Economic Changes*. It is of importance to know whether these are errors or not, since Mr. Wells' book, from the nature of the subject with which it deals, if for no other reason, is likely to have a wider circulation than is commonly accorded to economic treatises.

The first exception taken by Professor Patten on the score of logical method is to pages 124 and 125. For the sake of clearness and fairness, we will first lay before the reader the passage criticised and then examine the objections made to it. Mr. Wells says :

Preliminary to entering upon any review of this vexed question, a consideration of the following general propositions may possibly help to a determination of opinion in respect to it : *First*. It is a universally accepted canon, alike in logic and common sense, that extraordinary and complex agencies should never be invoked for the explanation of phenomena, so long as ordinary and simple ones are equally available and satisfactory for the same purpose. *Second*. The most natural presumption, and the one which the commercial world most readily accepts, is that when *an article* under free competition declines in price, the supply has outrun the demand ; not of demand in the abstract, for in a certain sense there is no limit to the demand for useful and desirable things, but of demand at the pre-existing price. If this presumption is not correct, then the hitherto universally accepted influence of the law of supply and demand on prices has been entirely misunderstood, and belief even in any such law may as well be abandoned. On the other hand, if the presumption is correct, then any cause, other than a disturbance of pre-existing relations of supply and demand, capable of occasioning a decline in prices, must of necessity be an extraordinary one, and demanding evidence, not general, but specific and clear in the highest degree, as a prerequisite to a belief in its actual occurrence and influence. Now, as to the character of the evidence that can be

ed in support of the two great causes respectively to which the fall in prices has been mainly attributed, it is not to be denied that evidence pertaining to the first can, either with or without statistics, be stated with precision ; while the evidence pertaining to the second is at best indefinite, and mainly conjectural. In other words, the "*how* of the depression of prices," as Professor Lexis, of Göttingen, has very aptly expressed it, through a lowering of the cost of production and transportation, and a widening of the area of cultivation, is clear to all ; the *how* of the effect of the enhancement in value of one description of money no one has, thus far, proved to us *in concreto*. If any one denies a connection between the prevalent low prices and the assumed depreciation of gold arising from scarcity, let him explain the *modus operandi* ; let him set forth the process of reasoning ; the motive which induces a seller to accept, except upon the issue of the struggle between supply and demand, a lower price for his goods in the face of an abundance of capital and a low rate of interest."<sup>1</sup>

I presume that if this passage were presented to the recognition of the economists of the world, nine out of ten would give their qualified assent to it. If we confine our list of recognized economists to those holding chairs of political economy in colleges and universities, the proportion would be no less. Until Professor Patten's objection I should have said with confidence that nobody could be found to dispute so plain a proposition.

To serve that Mr. Wells says : "The most natural presumption — and one which the world most readily accepts, is that *an article* under free competition declines in price the moment it has outrun the demand," — not all articles but some particular article. That he did not mean all articles when he said "an article" is made plain by the next succeeding paragraph, in which, to show the causes which have disturbed pre-existing relations of supply and demand, he selects for treatment twenty-three articles, which are divided into two groups. The dividing line of the groups is between certain articles concerning which the evidence of new relations of supply and demand is very clear and decisive, and others as to which it is more or less inferential and circumstantial. Nothing could be more

<sup>1</sup> The quotation is from Lord Addington.

patent than that Mr. Wells did not mean all articles when he said "an article."

The criticism upon this passage has no other force or point than what is derived from the assumption that he meant something different from what he said. As the readers of this paper are presumed to have the whole of Professor Patten's article within reach, I will reproduce only the words which embrace the gist of his answer to the passage quoted from Mr. Wells, *viz.* :

Yet this method of accounting for *the general fall of prices*, natural as it may seem to Mr. Wells, has never been used before the present bi-metallic discussion. The whole subject of the changes in the value of the precious metals has occupied the attention of economists for the last two hundred years ; and in every such discussion until the present time, the assumption has been that if prices *as a whole* have fallen it was a result of the appreciation of the value of money. It is almost comical, therefore, to see Mr. Wells, in the face of the whole economic discussion of the last two centuries, setting up a new point of view, not yet a dozen years before the public, as the natural one. Does it need any more proof to show that the attempt to distinguish between the ordinary and the extraordinary, or the natural and the artificial, is of no value in arriving at correct logical conclusions?

As it is not to be presumed that Professor Patten has intentionally misrepresented Mr. Wells, it becomes not only almost but altogether comical to find an economist lecturing his brother economist about logical method, with such a sample as this for illustration. The "attempt to distinguish between the ordinary and the extraordinary, or the natural and the artificial," here spoken of as being of no value in arriving at correct logical conclusions, refers to Mr. Wells' idea that, if the price of crude petroleum, for instance, has declined eight cents per gallon in a given period, and if the production of it is found to have increased in the same period from 9,000,000 barrels to 28,000,000 barrels per year, then the ordinary and simple explanation would be that the supply has outrun the demand, and that this explanation should be preferred to any extraordinary and complex one. Bad logic, thinks Professor Patten, "because it does not give any criterion by which to distinguish an extraordinary

complex agency from an ordinary or simple one." Another, he conceives, may say that the increased production of oil is an extraordinary and complex agency, and scarcity of gold an ordinary and simple one. If this is mere logomachy it may be passed by. If it means that the over-production<sup>1</sup> of an article is not a more simple and rational explanation of a fall in price than the state of the circulating medium, it is the same as saying that a demonstrable cause is no better than an undemonstrable one.

In the closing section of the paragraph to which I have referred [continues Professor Patten] Mr. Wells makes the serious mistake of confusing the abundance of capital and a low rate of interest with an abundant supply of money. From the approving manner in which he quotes Lord Addington he seems to affirm that there can be no appreciation of the value of money so long as there is an abundant supply of capital and a low rate of interest.

Now we are favored with a brief homily on the difference between money and loanable capital.

How far a writer is bound by the quotations he makes from other writers, is a question that calls for separate treatment in a separate case. It is fair to presume that Mr. Wells is acquainted with Wayland and other horn-books that were in use in our colleges forty years ago, in which the distinction between money and loanable capital was fully explained. Whether Lord Addington is acquainted with the difference we do not know without having the full text of his discourse before us. Assuming that Mr. Wells is not wholly unmindful of it, he might suppose that, finding in Lord Addington's paper something that coincided with his point of view as to what can be explained and what can not be readily explained, he hastily quoted it, not thinking that he would be held responsible for the remoter consequences of Lord Addington's reasoning. But does Professor Patten succeed any better than Lord Addington in expounding the matter in hand? His criticism ends with these words :

By over-production is meant, of course, production in excess of demand at prevailing price.

Capital may grow and interest may fall at the same time that money is becoming scarce. In what way would Mr. Wells account for the fall in currency prices at the close of the Civil War except by a change in the relation of the quantity of paper money to the volume of business?

I do not know what Mr. Wells would say to this, but I should say that, inasmuch as the paper money was based on government credit, the fall in currency prices at the time mentioned was due to an improvement of that credit. The Civil War closed about the middle of April, 1865: On the first of January in that year gold was quoted at 226. On the 10th of April it was at 144, and there had been *no* "change in the relation of the quantity of paper money to the volume of business."

But is it true that capital may grow and *interest may fall* at the same time that money is becoming scarce? Every banker will deny that proposition as a matter of fact within his own observation and experience; and as political economy is the arrangement and correlation of observed facts, political economy denies it also. Capital is the very thing that buys money, and no country which has abundance of capital can fail, except momentarily, to have corresponding abundance of money. There is no criterion as to whether money is becoming scarce except the rate of interest. Scarcity of money may be produced either by exporting it or by locking it up. In either case it is withdrawn from the loan market, and interest must rise. In the case of a beleaguered town interest might fall at the same time that money was becoming scarce by hoarding, there being no employment for it; but that would not be a case where capital was growing, which the hypothesis requires.

We come next to Mr. Wells' statement that there is a class of commodities, the prices of which "have not in recent years experienced any marked degree of change." These articles are mainly such as are produced by hand; and the argument or suggestion is that, while in articles produced by continually improving machinery we should expect to find a fall in prices, the same would not be true of wares for whose production new and more expeditious processes have not been devised. A con-

rable list of such articles is given. The comment of Professor Patten upon this is as follows :

Now gold is a product of manual labor and belongs to the latter, not to the former. Gold is obtained in the same way as formerly. There have been no changes in the methods of producing it. Hand still washes the gold from the sand, and its value must be determined by the value of the labor. Labor having increased in value as Wells claims (page 361), we should expect to find as a result that the value of gold in the market would be greater than formerly.

I confess I am so dull as not to see the point of this reason—but whatever it may be, I take issue on the facts at once. One-half in value of all the bullion produced by the great Comstock lode, probably the greatest deposit of the precious metals ever discovered, was gold; and this was all produced by machinery. There was no washing by hand labor at all. All or nearly all the South African gold mines are now worked by machinery, and the best of this machinery is made in the city of Chicago. And are we to call the gravel washings of California, operated by gigantic flumes that have cost hundreds of thousands of dollars, “hand labor”? This is not very important except as throwing a side light on the qualifications of Mr. Wells’ critic. I find it in the way, and I brush it out of the way for better or for worse.

We now approach a very abstruse question. “*How prices are depressed*,” says Professor Patten,

is not an independent proposition to be treated alone. It can be determined only after knowing *how prices are fixed*. That the scarcity of gold lowers prices is a deduction from the well-known facts upon which the laws relating to the value of money depend.

Just as a scarcity of air causes death is also a deduction from the well-known facts upon which the laws of human life depend. Suppose that a man dies and A says that it is perfectly plain that he died of small-pox, and B says that since he stopped doing that thing there may have been a deficiency of air. A replies that there is no such thing as a deficiency of air. Mr. Wells does not deny absolutely that there may be a scarcity of gold. He does not believe that there is any, and he gives his reasons

for thinking that there is none. Then, in addition, he gives his reasons for thinking that the twenty-three commodities have declined in price by reason of ascertainable facts affecting their production and transportation. Is there anything in this calling for the magisterial advice that he should first learn how prices are fixed? It is worth noting here that since the stock of gold is an increasing quantity — the yearly supply being added to the old store — it is for the believers in scarcity to prove their case.

A little farther on in the same paragraph we read :

Perhaps, however, the best proof of the fact that a change in the quantity of money affects prices comes from the history of paper money. There is in this history an abundance of facts showing that the quantity of money is an important element in fixing prices, and Mr. Wells must transfer his battle to the causes fixing prices in these cases before the facts of his opponents can be called into question.

There appears in many parts of Professor Patten's article a suggestion of wide gaps in Mr. Wells' acquaintance with economic literature, which his critic would have no difficulty in supplying. The question of relative information on economic topics may safely be left by Mr. Wells to an intelligent public. It is rather significant that no list is given of the works to which Professor Patten alludes. Are we to understand that these unnamed modern authorities sustain the conception that prices are affected by paper money, meaning by that term paper convertible into coin? Nobody will question the fact that inconvertible paper does affect prices quotable in such paper. That Professor Patten meant convertible paper, or at all events meant to *include* convertible paper, becomes evident by his criticism of Mr. Wells' page 222, as we shall see farther on. I do not pretend that I have read everything that has been written on the subject of money, but what I have read and the reflection I have been able to give to the subject lead me to the conclusion that paper money convertible into gold has no effect at all upon prices, although prices, which are a reflex of the course of trade, do have a very considerable effect on the quantity of paper money afloat. I think that this is the opinion of the majority

economists to-day.<sup>1</sup> In other words, it is the march and rise of trade that, within limits fixed by the quantity of metallic money (and very elastic limits these are), makes prices high or low and determines whether there shall be much or little paper money afloat. Mill's statement that bank notes, bills or checks, as such, do not act on prices at all, but that whatever in whatever shape given, whether it gives rise to any transferable instruments capable of passing into circulation or does so act, is true. Reference might be made to Tooke, *op. cit.* At the conclusion of his examination of the high and low prices in Great Britain between 1793 and 1837, he says :

There is not, as far as I have been able to discover, any single commodity in the whole range of articles embraced in the most extensive fluctuations of prices, the variations of which do not admit of being distinctly accounted for by circumstances peculiar to it in the relation of supply, demand or contingent, real or apprehended, to the ordinary rate of competition, without supposing any influence from the Bank restriction and the degree in which the difference of exchange [premium on gold] which could not have existed but for the restriction, may be considered to have operated distinctly on the cost of production.<sup>2</sup>

Nevertheless the variations in the amount of the Bank's circulation during this period ranged from £9,246,790 in 1796 to £9,543,780 in 1817. James Wilson, one of the strongest opponents of the doctrine that convertible paper money affects prices, makes a concession which I quote in order not to omit anything which may be deemed important, *viz.* :

To whatever extent the issue of paper money released gold from the currency, to that extent there would be an increased supply of that commodity on the general markets of the world and its value would be correspondingly diminished as much as if a similar additional supply had been received from the mines ; and to this extent would the substitution of a paper for a gold currency increase prices generally in *all* countries, while in each country they would remain *relatively* the same.<sup>3</sup>

Not the same remark be made concerning clearing houses and other modern contrivances: To whatever extent clearing houses release gold from the currency, *etc.* ; to what-

<sup>1</sup> See F. A. Walker, *Political Economy*, p. 180.

<sup>2</sup> Vol. ii, p. 349.

<sup>3</sup> *Capital, Currency and Banking* (London, 1847), page 82.



ever extent ocean telegraph cables release gold, *etc.*? True, clearing houses and ocean cables are not currency, but they "release gold" to an enormous extent, and it is the releasing, not the currency function, that is here in question.

In his next succeeding paragraph Professor Patten says :

He [Wells] brings forth a table (page 222) to show that prices are not determined by the quantity of money, just as if the author of the laws of money was a mere theorist ignorant of commercial facts. While there has been an abundance of fault found with Ricardo's knowledge of industrial relations, no one has dared to question his thorough familiarity with money matters.

Mr. Wells on page 222 presents a table showing the increase of the circulating medium in the United States in a period of ten years, 1879 to 1889. The increase was upwards of \$600,000,000, or more than 60 per cent, being more than double the rate of increase of the population. Since this was a period of declining prices of most articles of commerce, he offers the state of facts to those who hold that the volume of the circulating medium controls prices, as a nut to be cracked. It would be more to the purpose for Professor Patten to crack it than to cite in this vague way "the author of the laws of money." In what convention, by the way, was Ricardo nominated as the author of those laws? Chevalier assigns part of the honors to Aristotle. I suppose that all that Mr. Wells intended by his table on page 222 was to emphasize his general contention that new supplies of commodities, due to new inventions, new means of transportation, *etc.*, are potent to reduce the prices of those things in the face of conditions which tend ordinarily to increase them. At all events, that is all that I make out of it.

It is regarded by Professor Patten as a glaring defect in Mr. Wells' point of view that he does not desire any reduction in the price of silver, whereas the critic thinks that the American people as a whole "are deeply interested in a low price for silver." Here is a direct conflict of opinion as to the interests of the country respecting a matter of much public agitation and concern. Mr. Wells' view is that a high price of silver is for

interest of the country because the country is "a large producer and seller of silver." That seems to be very simple and nizable. It is like saying that if a man produces more of an article than he consumes, it is for his interest that the article should command a high price. Every man's instincts point to that, and the instinct is not a misleading one. What is the argument on the other side? Why, that with silver at a high price the people would be able to have more silverware on their tables. Moreover "its clear metallic tone makes its use in musical instruments very desirable." Here are silver spoons and trombones set over against whatever we should be able to buy from foreigners with our exported silver. The higher the price of silver, the more tea, coffee and sugar; the lower the price, the more silver tea-pots, coffee-pots and trombones. Now I do not undervalue a good trombone or other wind instrument in the hands of a competent performer, but I have never been taught to use plated ware in preference to silver as furnishing less temptation to burglars; and if I had my choice at this moment between a silver coffee-pot and a plated one for household use I should choose the latter.

Passing over a paragraph concerning butter and oleomargarine, which I have read several times without seeing any point in it as a criticism on Mr. Wells, we come to a pretty wide question, namely, the influence of labor-saving machinery upon wages.

Wells' idea coincides, as a matter of observation, with that of Bastiat, that wages increase with the abundance of commodities consequent upon improved machinery. By wages is meant the material well-being of the wage-worker. Bastiat's so-called law is well known and need not be here quoted. Mr. Wells says "perhaps" it is a law, but he prefers to call it a result, which is certainly safer, since there is nothing in the nature of laws to give it the character of a law. Professor Patten objects that "the whole problem of rent and the influence that it has on the distribution of wealth are overlooked." Moreover

[Wells] assumes that wages are fixed by the average return for labor and not by the least productive labor. According to well-established economic doctrine, wages and interest are determined by the

margin of cultivation, that is, the poorest land of which the community makes use. Any advantage possessed by laborers on better land is taken from them as rent.

If Professor Patten has found *any* "well-established" doctrine respecting wages he is to be congratulated, for I think that no other professor of political economy can say as much. Doubtless all have some doctrine established in their own minds, but that is not what is meant when we speak of a doctrine as well established. We mean by this a doctrine concurred in by such a decided preponderance of writers that any dissent from it is looked upon as an eccentricity. There is not at the present time any such general consensus of opinion respecting the determining cause or causes of the rate of wages.<sup>1</sup> But we are told here that "wages *and interest*" are determined by the margin of cultivation. The only writer I am acquainted with who holds this view is Mr. Henry George, who says in *Progress and Poverty*, page 183 :

The relation between wages and interest is determined by the average power of increase which attaches to capital from its use in reproductive modes. As rent arises, interest will fall as wages fall or will be determined by the margin of cultivation.

In the view of Ricardo wages and profits are the antitheses of each other, the one rising as the other falls, and interest is ultimately and permanently governed by the rate of profit; from which it would result that if wages follow the margin of cultivation, interest does not. I do not wish to be understood here as "quoting approvingly," but merely as citing Ricardo against Patten and George. But what connection, in any way, has the margin of cultivation with *Recent Economic Changes*? How are wages in New England determined by the margin of cultivation when there is practically no such margin there? Ah, but there is a margin in some other place, with which New England has commercial relations. Yes. But it is, and has been, for some time back, probably for the whole time covered

<sup>1</sup> See on this point the writings of Thornton, Mill, Cairnes, Jevons, Leroy-Beaulieu, F. A. Walker and Sumner. Professor Sumner, whose essay I consider the best of the series, begins it by showing the chaotic state of opinion on the subject.

Mr. Wells' investigations, a diminishing and not an increasing quantity. Mr. Wells was careful to say (page 395) that his view was confined to the present time and did not look forward to the occupation and tillage of all the land on the earth's face, or to the exhaustion of the coal supply. It would be as appropriate for Professor Patten to say that Mr. Wells wholly overlooked the growing cost of coal in Great Britain to the increasing depth of mines.

considerable space is given to sarcastic comment on Wells' terminology, his use of the words "all-sufficient," "pervasive," *etc.* The force of this criticism depends on whether or not the terms were rightly used in the particulars. If the construction of a railroad from a town to a coal mine has demonstrably reduced the cost of carrying coal that distance by one dollar per ton, and if we find coal actually selling in the town at a dollar a ton less than before, we are justified in saying that the construction of the railroad is an sufficient reason for the reduced price, even though there may have been some little improvements made at the same time in the methods of mining coal. The law does not concern itself with trifles, nor shall I concern myself further with this one.

We have seen what warrant there is for Professor Patten's assumption of superiority over Mr. Wells in logical method. We shall now see whether he is any happier in dealing with facts.

Nearly four pages are taken up with the growth of the beet sugar industry in Germany, and its effects upon Germany, upon other sugar-producing countries and upon the world in general. At the bottom of all is the assumption that this growth has been entirely due to the bounties on exportation paid by the German government.

In the contest between the cane sugar of the South and the beet sugar of the North [says Professor Patten] climate was on the side of the South while intelligence and capital were on the side of the North. Intelligence showed itself a more important factor than climate, and the price of sugar produced in Germany has now been reduced much below what it could have been while the whole supply of the world was

obtained from the half-civilized semi-tropical regions. This reduction of the price of sugar was greatly stimulated by the bounties paid by the German government for the exportation of sugar. These made the profits of sugar production so great that the industry was developed throughout Germany in many new places for which it was specially suited. It is not likely that fifty years of production without a bounty would have done so much for cheapening the price of sugar as the bounty-paying policy has done in the last ten years.

If this is not true, everything in Professor Patten's treatment of the subject falls to the ground.

I shall cite two authorities in addition to the narrative in Mr. Wells' book. One of these is the *Encyclopædia Britannica*, article Sugar, page 626, by Dittmar and Paton. The other is Schoenberg's *Handbuch der politischen Oekonomie*, 2d edition, III, 432-434; *Zölle und Rübenzuckersteuer*, by Riecke. And first the encyclopædia :

The efforts of growers [of beets] have been largely directed to the development of roots yielding juice rich in sugar ; and especially in Germany these efforts have been stimulated by the circumstance that the *excise duty* on inland sugar is there calculated on the roots. The duty is based on the assumption that from  $12\frac{1}{2}$  parts of beet 1 part of grain sugar is obtained ; but in actual practice 1 part of raw sugar is now yielded by 9.27 parts of root. Moreover, when the sugar is exported a drawback is paid for that on which no duty was actually levied, and hence indirectly comes the so-called bounty on German sugar. In 1836, for 1 part of sugar 18 parts of beets were used ; in 1850 13.8 parts ; in 1860 12.7 parts, and now [1887] 9.25 parts only are required. Observe that the article in the encyclopædia says that the growers were stimulated by *the form of the tax* to produce a beet which should be rich in sugar.<sup>1</sup> That is, they wanted to get rid of the tax as much as possible. Similarly Mr. Wells says (page 296) :

For a number of years after 1869 this arrangement worked well, the drawback being about equivalent to and no more than the tax. But nothing stimulates human ingenuity in a greater degree than the prospect of gain through the avoidance of a tax ; and gradually a change in the condition of affairs took place, *etc.*

<sup>1</sup> In the same way Riecke says the technical improvements were made under the stimulus of the tax (unter dem Sporn der Rübensteuer). p. 432.

ke says that the internal excise tax on the beets in 1841 was 15 pfennigs per centner,<sup>1</sup> gradually increased to 30, 60, 75 pfennigs, finally (1861) to 80 pfennigs, the latter sum being about 20 cents of our money. The same authority tells us that in the year 1844, 20 centners of beets yielded 1 centner of sugar; in 1861, the ratio was  $12\frac{1}{2}$  to 1; in 1878,  $10\frac{3}{4}$  to 1. Mr. Wells says that in 1889 the ratio was 8.80 to 1.<sup>2</sup> Riecke also gives us prices of refined sugar per centner in Berlin and Magdeburg from 1822 to 1884 thus: 1822, 34 thalers (102 marks); 1844,  $17\frac{1}{2}$  thalers ( $51\frac{3}{8}$  marks); 1871, 37 to 45 marks according to quality; 1878, 29 to 36 marks; 1884, 25 to 32 marks.

The tax-drawback became a bounty on exportation about 1844. Between 1844 and 1869 (25 years), the Germans improved the plant from the ratio 1 of sugar to 20 of beet, up to  $12\frac{1}{2}$ ; from 1869 to 1878, to  $10\frac{3}{4}$ ; and since the last-named year to  $8\frac{1}{2}$ . Does it teach us anything about the influence of the export bounty to know that an improvement that had been going on steadily for forty years did not stop when the internal tax, unexpectedly and undesignedly, became a bounty on exportation? Of course when the export bounty became considerable there was a deal of exporting. If Professor Patten says by "the cheapening of the price of sugar" the cheapening in the London market, he is quite right. There is no mystery about that. John Bull has a sweet tooth. He can be lured to eat sugar on easy terms. But if Professor Patten insists that the export bounty has caused any improvement in the methods of culture or treatment that would not otherwise have taken place, there is not only no evidence to show it, but no reason whatever for believing it. And what about the price of sugar in Germany that Professor Patten says has probably been cheapened more in the last ten years than it would have been in fifty years without the bounty? In the ten years ending 1884, during all of which a bounty was paid, the price was

<sup>1</sup> The centner is the *Zoll-centner* (or customs hundredweight), not the metric centner.

<sup>2</sup> Professor Gustave Cohn says that the ratio has fallen to  $8\frac{1}{2}$  to 1. *System der Zuckerwissenschaft* (1889), p. 581.

reduced not more than twelve marks per centner. In the fifty years, 1822–1872, it was reduced more than sixty marks. It is true that there has been, all this time, an import duty on sugar in Germany, which has operated as protection to both the beet-grower and the refiner in the home market. The point I make is that Professor Patten is all at sea as to the particular facts upon which his criticism of Mr. Wells rests.

The Professor thinks, moreover, that

Mr. Wells is also greatly mistaken in his supposition that the taking off of the bounties on the part of European nations would cause the production of beet sugar to become unprofitable and compel a return to the natural production of Southern regions.

Mr. Wells has not indulged any such “supposition,” or if he has, he has kept it to himself. What he said was :

The great difficulty of the situation, however, is that *much* of the sugar industry that has been called into existence artificially would be immediately ruined, with great loss and suffering to a large number of people, if the bounties were at once discontinued.

This is true. It has been proved true in Russia. It is not necessary to explain how. Nor is it necessary to point out the difference between what Mr. Wells said and what is attributed to him.

In Mr. Wells' appendix on iron and steel, he showed, on the authority of a pamphlet issued in 1888 by Mr. James M. Swank, that the average price of Scotch pig iron in Glasgow for the ten years 1878–1887, inclusive, had been \$12.94 per ton, and that the average price of anthracite foundry iron in Philadelphia during the same period had been \$21.87 per ton. The difference is \$8.93 per ton. The difference in price is accounted for by freight charges about \$2 and duty \$7 per ton. Multiplying the number of tons of pig iron consumed in this country during the period by seven, he said, would show “the relative price or cost of iron and steel to the consumers of these metals in the United States as compared with those of Great Britain and other countries.” (Page 471.) Is not that a fair statement and a true statement? It seems to me as true as any proposition in Euclid. The whole drift, scope and purport of the appendix was to show

this disparity of cost had disabled the United States from competing with Europeans in supplying the vast populations comprised as the "non-machine-using countries of the world" with iron and with the things of which iron is the basis and condition of cheap production. There are twelve pages in the appendix and there are thirteen distinct and separate statements of it is the *comparative cost* of iron and steel between the two countries that is under review, — an average of rather more than one such explanation to each page. We quote the last graph in full :

The American people are thus subjected to a very heavy and enormous loss. Their power of controlling their home markets is reduced ; they lose the advantage of their position and of their opportunity to supply the vast non-machine-using countries of the world, numbering over a thousand million population, with goods and wares at high wages and low cost, for the reason that, in consequence of parity in the price of the material which lies at the foundation of their strength, they have, by their own act, given supremacy to Great Britain and her lower cost of her investments for meeting this demand.

The appendix next tells us that, if all the duty on iron and steel were removed to-morrow, the prices in England would rise to our level, nobody in this country would be hurt, and the conditions for our sharing in the supply of the non-machine-using countries with iron and other manufactures would be equalized with those of Great Britain. Various reasons are given for this condition. They need not be specified here, but it is worth noting that the condition predicted has already come to pass, partly as a result of causes shown by Mr. Wells to be then working. Iron and steel rails are selling in England as high as in this country. The cost of making them is as high. The *Iron Age* of Pittsburg (March 7) figures the cost of making Bessemer pig \$1.87 higher in England than here.

Now what objection does the critic raise to this ?

It is now too late [he says] to expect that the American people will consent to the destruction of their leading industries [*sic*], and now it devolves upon the advocates of free trade to show that American production would not be reduced if the tariff were taken off. On the one hand they must prove that the tariff is added to the price



paid by consumers, and on the other hand that production in America would not be less without a tariff. These two fallacies are both plausible and when used with skill are quite effective, but it will not do to bring them into too close connection.

The occasion for this sarcasm is found by ignoring the main body of the argument in the appendix and selecting one or two paragraphs in which the statement is made, perhaps too broadly if taken alone, that the cost of pig iron is absolutely enhanced by the tariff seven dollars per ton to the American consumer; whereas, the purpose of the appendix was to show that, looking at comparative cost in the two countries as competitors in the world's markets, the price was by reason of the tariff seven dollars to the disadvantage of Americans. Here, if anywhere, and in the manner indicated, Professor Patten has made a point; but I cannot consider it anything to be proud of.

My attention is arrested by the phrase: "It is now too late to expect that the American people will ever consent to the destruction of their leading industries," and I think that it is fair to ask a stickler for precision of thought and language in economic discussion a few questions thereunder. What is a leading industry? What is it to consent to the destruction of a leading industry? In my younger days canal boating was a leading industry. Did the American people consent to its destruction or not? It would seem that that portion of them residing in the state of Pennsylvania consented to it without the least hesitation, indeed contributed much to hasten it. The shelling of corn on shovels, as Mr. Wells says and as I remember, was once a leading industry. The American people consented to the destruction of that. The chopping and hauling of cord wood was once a leading industry and logging is such now; but the former is already destroyed in many parts of the country and the latter is going the same way, with the consent of the people, too, as far as I can discover. Retail trade has always been a leading industry; yet Professor Patten thinks that the number of retail traders ought to be greatly curtailed, and he favors the use of the taxing power to that end. His argument shows that if this industry could be destroyed, he at

•  
: would consent to the destruction.<sup>1</sup> If Professor Patten, instead of using catchwords, had said that the American people would never consent to such a reduction of the tariff as would cause the abandonment of iron-making, for instance, that would have been an intelligible statement and would have opened for discussion a variety of interesting questions, and among the very ones treated in Mr. Wells' appendix, *viz.*: Will a reduction cause the abandonment of iron-making? Will a reduction cause the abandonment of wool-growing, salt-making, copper-mining, *etc., etc.*? To say, instead, that the people will never consent to the destruction of leading industries is to make an assertion which, if it means anything at all, is not true; for they have already consented to the destruction of several and have even rejoiced to see them go. I have aimed to examine *seriatim* all the specific objections which Professor Patten has raised to Mr. Wells' book. Economists will judge whether those objections are well founded or not.

HORACE WHITE.

<sup>1</sup> The Principles of Rational Taxation, by Simon N. Patten.

## REVIEWS.

*Travels in France during the Years 1787, 1788, 1789.* By ARTHUR YOUNG. With an introduction, a biographical sketch, and notes, by M. Betham-Edwards. London, George Bell and Sons, 1889. Bohn's Standard Library. —lix, 366 pp.

It was a happy thought to celebrate the centennial of the Revolution with a reissue of Arthur Young's classic *Travels* which have been so long out of print. Equally happy was the selection of Miss Betham-Edwards as editor. Her rare familiarity with almost every part of modern France, her enthusiasm for her author and her own vivacious style have enabled her to present Arthur Young to the modern reader in a most attractive manner. The introduction is a succinct comparison of the France which Arthur Young knew with the France of to-day. It is so suggestive and valuable that one wishes it were longer. The sketch of Young's life is done with a skilful and sympathetic hand. His life was one of strange contrasts. Hopelessly unsuccessful as a farmer, he was one of the greatest of writers on agriculture. His work on France, it is hardly necessary to say, stands in the very front rank in the department of economic geography and holds a unique place among authorities on the history of the Revolution. His family life involved unusual extremes of joy and sorrow, and he spent a blind old age as an eloquent popular preacher.

One oversight on the part of the editor should be remedied in a second edition. We are nowhere told that this volume is not a complete edition of Young's *Travels*. It is in fact merely the *Travels* proper, with the essay on the Revolution. The complete work includes, in addition, a very valuable series of essays on the industrial condition and economic geography of France. In them are to be found thoroughly scientific accounts of the state of agriculture, commerce, manufactures, taxation and wages, with full statistical tables, as well as a description of the geographical distribution of the different products. On one of his journeys Young went into Northern Italy and Spain, and he records his impressions in his journal and discusses the facts in short essays. All this, which comprises more than one-third of the original work, is omitted from this new edition, and properly enough, as this is a popular reprint for the general reader; but the fact should have been stated in the preface. The complete edition, first published in two stately quartos in 1794, is now generally most accessible in Pinkerton's *Collection of*

*ges and Travels.* A French translation, edited and annotated by [unclear], has hitherto been the most convenient form of the *Travels* for persons of moderate means.

Miss Betham-Edwards, in a note on a list of feudal rights, gives a reference to Henri Martin "on the horrible privilege of *la marquette*." [unclear] does not seem to be aware that this favorite horror of sensationalists on the middle ages seems surely destined to follow Pope Joan into the limbo of exploded myths. Every one who reads Karl Schmidt's learned and exhaustive treatise on the *Jus Primæ Noctis* will admit that at least this alleged feudal right is a very perilous subject to dogmatize.

He has certainly proved that the right was never a striking characteristic of the feudal system in any place. Most of the so-called evidence is of a very evanescent nature and collapses promptly under critical examination. Schmidt concludes that the belief in such a right is "in gelehrter Aberglaube" dating from about 1500. Such alleged documentary evidence as has been advanced has a decided ætiological character and the entire absence of allusion to the right in the French *Chansons de Roland* is most significant. Schultz, the author of *Das höfische Leben zur Zeit der Minnesinger*, found no traces of the right in the sources consulted for that work. There is nothing on the subject in the canon law, the papal decretals or the proceedings of church councils. The *argumentum e silentio* in these cases is so strong as to require the best of evidence for rebuttal. In the absence of that, the mere enumeration of the names of great scholars who have believed in it has comparatively little value.

EDWARD G. BOURNE.

*Industrial Transition in Japan.* By YEIJIRO ONO, Ph.D. Publications of the American Economic Association, Vol. V, No. 1. 1900. — 121 pp.

There is perhaps no other country in the world to-day so interesting to the economist from the scientific standpoint as is Japan. The remarkable efforts made within the last few years by her people—a people who in western countries had been considered not more than semi-civilized—to throw off the shackles that bound them to the past, and to take their place among the highly civilized nations of the earth, have awakened the interest and hearty sympathy of the world. In consequence, every contribution that will help one to understand the real situation of affairs in Japan will be eagerly read; and this really admirable monograph on the present industrial transition in that country is doubly welcome.

After a very brief historical introduction to make what follows readily understood, the author gives an account of the present industrial status,

discussing especially the distribution and density of the population, and the conditions of agriculture and of manufactures. Primitive methods in agriculture and manufacturing are what one expects; but many persons will be surprised to read of the wide extent of territory that is yet to be brought under cultivation, and of the consequent opportunity for a very wide extension as well as improvement in agriculture. The present backward condition of affairs—brought about mainly, the author thinks, by the misgovernment of the country under the feudal régime—might well have served, had the author been of the *laissez-faire* school, to “point a moral”; but in his opinion the government in its present form may well be active in helping to right the wrongs of the past. To be sure, the chief duty of the state is to free the people from their feudal bondage—a task which, however fully accomplished in the political sense, is yet far from completion so far as industrial conditions are concerned. But in the author’s opinion there is also much for the state to do in the way of positive legislation. The present unfavorable distribution of the population, the grievous burden of the land tax, the decay of cities, even the primitive methods of labor and of living are all part of the feudal inheritance, and these defects cannot be healed without the direct aid of the state.

The second part of the monograph, in which the author considers the steps necessary to complete the industrial transition, shows sound knowledge and (what is better) a candid coolness of judgment, a judicial temper. His summary of the needs of Japan is in these words: “The final goal at which Japan ought to aim is to establish manufactures and to increase the efficiency of her national energy by the aid of science and of art.” This opens up the well-worn but by no means worn-out question of protective tariffs. Protectionists of late years have been holding up Japan as a terrible example of the effects of free trade, and have been denouncing England and her system as the cause of the bad industrial conditions in Japan. The monograph recognizes the injury done by the treaties which prevent the securing of a revenue from higher import duties, yet it does not advocate a protective tariff. The author thinks that a protective tariff could not effect the desired diversification of industries; but he displays none of the polemic spirit which commonly accompanies a discussion of protection *versus* free trade. He confines himself to a careful analysis of the present conditions of the country, and a discussion of the measures which in his judgment these conditions require. The means by which the industrial transition is to be successfully completed may be summarized in these words: better means of communication, a better system of land tenure, better training for the working people, improvements in methods of taxation and the diversification of industry that will come from these.

the concluding pages the author discusses the probable social consequences of the industrial transition. He fully recognizes the difficulty of transition, the suffering that must come, especially in the case of ill-fed laborers; but he has confidence that the people will respond readily to their new interests, and will soon learn to adapt themselves to a new environment. It is perhaps natural that he should take a more hopeful view of the situation than do many foreigners. Some Americans long resident in Japan think that the transition to the new circumstances will not be readily made, that the changes now encouraged by the government are coming much too rapidly, and that there will inevitably be a disastrous reaction. The world will hope that the author's optimistic opinions may prove to be well founded.

One may suggest to the author that few American readers are well versed in the geography of Japan. It would have been more convenient for some of them, if his map had contained the names of all the chief places mentioned in the text. So, too, the American equivalents of Japanese money might have been mentioned in a note. It is not yet considered a disgrace for even an educated American not to keep these things in mind; and for such as do not, these helps would have been welcome. Still, such trivial faults are worth but a passing note. The book is one that will be read with interest and profit, and it should find a sale outside the usual range of the publications of the Economic Association.

JEREMIAH W. JENKS.

*Industrial Progress of the Nation: Consumption limited, production unlimited.* By EDWARD ATKINSON, LL.D., Ph.D. New York and London, G. P. Putnam's Sons, 1890. — 8vo, 395 pp.

This volume contains Mr. Atkinson's recent contributions to the *Atlantic* and the *Century* magazines on economic topics, together with a number of essays and addresses from other sources. They vary in character from the Commencement address at the University of South Carolina to the broad and startling economic theory of "Consumption limited, production unlimited" to the description of the "Aladdin Cooker"; from "Slow-Burning Construction" (how to build cotton-mills) to the final essay on "Religion and Life." They are full of statistical facts and are marred and disfigured (as it seems to me) by the numerous diagrams of horizontal, heavy, black lines, the constant use of which is one of the weaknesses of the amiable author. When a diagram, intended to make a comparison graphically vivid, can be understood only by reference to the accompanying figures, I submit that its usefulness is not apparent. I defy any one, however, to distinguish with the naked eye the difference between the lines (on page 105) representing the cost of standard por-

tions of clothing in 1870 and in 1880, although the figures show that there was an actual fall of nearly twenty per cent.

It is difficult to formulate an altogether fair and scientific judgment of Mr. Atkinson's contribution to economic science. No one can deny that his essays display a knowledge of practical affairs, an acuteness and an originality that are often immensely suggestive. To answer the attacks on the railroads by showing that the cost of moving freight has been diminished in twenty years from 3.45 cents to .68 cents per ton mile, and that the bread and meat necessary for a year's consumption can now be moved a thousand miles for one day's wages of an ordinary mechanic, is certainly an effective way of illustrating the benefits of private competition. To show that even in such a city as Boston, where land-values are high, a single tax would demand more than the entire income from land, is a very practical way of illustrating the exaggerations of Henry George. So also the inquiry: Why, if co-operation is a good thing, don't people co-operate?—there being no legal hindrance to it—and the general demand that social reformers shall present their plans in the shape of a legislative bill so that we may judge whether they are practical or not, are very pertinent. The "glass of beer a day" which communistic division of property might secure for us, and the unprotected "hen industry," are familiar to all readers. In short, in the isolated essay Mr. Atkinson combines a practical knowledge and a power of "putting things" that is deservedly popular and should be especially instructive to the professional student and the teacher.

Why, then, is this favorable impression not heightened, but diminished by the collection of the essays into a volume? One reason is, perhaps, that the author is not self-contained enough; that the very abundance of illustrations and ideas that he throws together wearies and confuses the reader. This is inevitable when a large number of popular papers are reprinted without excision and pruning. But the real reason seems to me to be this: the book leaves the impression that Mr. Atkinson is too overwhelmingly optimistic in his view of present society to be fully trusted in his generalizations. It may be true that the working men and women "are steadily securing to their own use and enjoyment an increasing share of an increasing product." It may also be true that the millionaire enjoys but a tithe of the wealth that he adds to the community and is thus a cheap man for the community to employ. But it is a long step even from these important propositions to the unproven assertion that "consumption is limited while production is unlimited," and that "the Lord maketh the selfishness of man to work for the material welfare of his kind." In the same way the repetition of the favorite couplet,



Of what avail the plough and sail,  
Or land, or life, if freedom fail?

to indicate prepossessions that may have controlled the author's  
visions and based them on sentiment as well as on economic fact.  
is does not affect the value of what Mr. Atkinson gives from the  
of his own business knowledge and experience, or the acute-  
of his judgment in regard to various schemes for social reform;  
will make us cautious in accepting all his generalizations. It would  
been better, perhaps, to have frankly labelled the book: Con-  
itions to the theory that this is the best of all possible worlds — with  
dition of the Aladdin Cooker.

R. M. S.

*pôt.* Leçons données aux cours publics de la ville de  
ixelles. Par H. DENIS, Professeur à l'Université. Première Série.  
ixelles, Veuve Monnom, 1889. — 8vo, xiii, 309 pp. — [Accom-  
né d'un] *Atlas de Statistique comparée.* — Large folio, 25 plates.

ce the volume of McCulloch, published in 1853, no work has  
red in English on the principles of taxation. English and Amer-  
readers have been compelled to depend on German and French  
es; and, from greater familiarity with the language, more com-  
on the latter. But it has been an unfortunate habit of most  
h writers on finance to discuss their topics in happy disregard of  
west thought in other countries. It thus happens that even their  
approved works on taxation give the reader only the French view,  
ie scientific or comparative view. This reproach to French litera-  
as now been removed by the admirable work of Professor Denis,  
s, however, not a Frenchman, but a Belgian.

Professor Denis made his reputation as an authority on finance nine  
ago with the valuable report to the city council of Brussels on the  
ie tax, afterwards reprinted as a bulky volume. Since that time he  
een giving courses of lectures on finance, which are now published  
ok form. The present volume gives us the ground covered in 1886—  
succeeding volume will continue the subject so as to cover the  
field of taxation.

e fact that these are simply published lectures contributes greatly  
value as well as somewhat to the shortcomings of the book. The  
is simple and clear, the arrangement is logical and sharply de-

But on the other hand the lecture form has made it imprac-  
e to give authorities for the facts and opinions quoted, other than  
rt bibliography at the close of each chapter. Furthermore, the  
s of the argument have not been pursued with such care as would  
ps be demanded in a work constructed on other principles.



Many of the finer points in the science of finance, including some that are of permanent practical importance in America, do not receive any attention at all. The history and facts of taxation, again, are given only in a very fragmentary way. With all these qualifications, however, the book of M. Denis, so far as we can judge from the present instalment, may be declared one of the most valuable works on taxation hitherto published. Its chief claim to recognition is not so much the views of the author, as the calm and unbiased consideration of the doctrines of all his predecessors. The fundamental vice of so many writers is the assumption that the views expressed by them are new. Ignorance of economic and financial literature is scarcely less common than ignorance of economic and financial facts. It is refreshing to find in the present work a complete history of the science, as well as a method which the author himself characterizes as "instructive, historical and above all statistical."

Professor Denis considers the science of finance as a subordinate division of sociology, and as distinct from political economy although having many points in connection with it. He attempts to lay down the law of their relation. He distinguishes between domains, fees (*la taxe*) and taxes, and then devotes the greater part of the book to a discussion of the problems of justice in taxation and to a consideration of the various direct taxes. I shall not endeavor to criticize his views in detail here, as there will be occasion to attempt this on a larger scale in another place. It will be sufficient to say that in many of the important questions, such as proportion *versus* progression, minimum of existence, incidence and diffusion, *etc.*, readers who have been confined to French and English works will find a wealth of new ideas and a mass of interesting facts. Of course no work written by a European, or at all events by a continental, scholar can be expected to treat primarily of those questions which most interest and affect Americans. But if there is any science at all in finance, such works as this must be deemed of the greatest importance to Americans and Europeans alike. Many minor mistakes might be noted; as *e.g.* on page 301, where the idea of the Italian classification of incomes in the income tax is ascribed to a German source. In reality the idea can be dated back to the beginning of the century in England, and it has received consideration in parliamentary reports and scientific essays for many decades. But such smaller points must be overlooked in a consideration of the general tone and value of the book. The usefulness of the work is greatly increased by the accompanying volume of graphic tables, which give in small compass what would require many words to explain.

EDWIN R. A. SELIGMAN.

*veau Dictionnaire d'Économie Politique.* Publié sous la direction de M. Léon Say et de M. Joseph Chailley. Livraisons 1-3. Paris, Guillaumin, 1890. — Large 8vo, 384 pp.

*ionnaire des Finances.* Publié sous la direction de M. Léon y, par MM. Louis Foyot et A. Lanjalley. Vol. I. Paris, Berger, vrault & C<sup>ie</sup>, 1883-9. — Large 8vo, 1562 pp.

*conomie Sociale.* *Revue mensuelle* publiée sous la direction MM. Félix Martin, Émile Cacheux, Georges Hamon et Tar- uriech. Paris, Marchal et Bellard, 1890. — 8vo.

*etin de la Société Française des Habitations à Bon Marché.* emière année. No. 1. Paris, 1890. — 8vo, 88 pp.

is is the age of vast undertakings. Within the last few months no han three comprehensive cyclopædias in various domains of politi- conomy have been begun in Germany, and one has been announced ngland. Now France, not to be outdone, enters the field.

ie *Nouveau Dictionnaire d'Économie Politique* is not a new on of the dictionary edited by Coquelin and Guillaumin almost ty years ago. It is a completely new work. But it is constructed very much the same lines, and many of the topics are identi-

In the three instalments which have already appeared, we search in for any of the adherents of the newer school, represented by the *e d'Économie Politique*. We may therefore conclude that the dic- ry will be edited on very much the same principles as its predeces-

It is a distinctly French work, intended for French readers. The ography even in important articles is confined almost exclusively to ch works. The few exceptions, as in the articles by Raffalovich and ard, only serve to emphasize the rule. But the essays are char- ized throughout by clearness and precision of both thought and age. The promise held out in the introductory circular that a part of the articles would be devoted to social topics seems to irlly well kept. Three important subjects are treated in the very instalment: *Assistance* by Chevallier, *Association* by Hubert Val- x and *Assurance* by Lacombe. It is surprising to find in the id of these essays so important a work as that of Gierke, *Das Ge- nschaftswesen*, entirely overlooked. The work is to be completed o volumes, of about eighteen instalments, and will of course be ble to those who desire to keep abreast of French development.

the *Dictionnaire des Finances*, of which the first volume has just completed, we have a work of considerably narrower scope. The ce of administration has been more nearly perfected in France elsewhere. Financial administration, in particular, has been

thoroughly studied. As every dictionary of finance must necessarily devote a large proportion of its space to the purely administrative features, a French work possesses many initial advantages. Theory, as we should expect, receives but scant attention. The main stress is laid on a critical presentation of the workings of financial institutions, mainly of France itself. And the articles are for the most part written not by economists widely known outside of France, but by writers whom the title-page describes as "*les principaux fonctionnaires des administrations publiques*." Some of the articles form veritable treatises in themselves. Such are, *e.g.*, the essay on Banks by Clement Juglar (68 double-column pages), on Budgets by P. Boiteau (220 pages), and on Railroads by Octave Noel (96 pages). But many of the smaller articles, also, are thoroughly well done and give a complete picture of the development and actual condition of French institutions. The student of comparative finance will find the work indispensable. There is one more volume to come.

Among the various associations that met at the Paris exposition one of the most successful was that known as the Congress of Social Economics. As a result of the interest awakened in the questions here considered it was decided to found a monthly journal, devoted entirely to their discussion. *L'Économie Sociale*, as the periodical is called, covers a wide but interesting field, which may be described in short as the relations of laborers to their employers and to each other. Among the chief topics to be studied are accidents, insurance, popular banks, dwellings, sanitary conditions, factory laws, trades unions and labor associations, co-operation and profit-sharing and in short all institutions which tend to improve the condition of the working classes. The scope seems to be very similar to that of the *Arbeiterfreund* in Germany. It is a sign of the times, all the more cheering because the attitude of the old orthodox school has been mainly such as to render the contest between *laissez faire* and socialism sharper in France than anywhere else. The founders of the new review, chiefly statesmen and professors in the law schools, give us their confession of faith in the introductory essay. Two theories of government confront each other, they say, *l'État providence* and *l'État gendarme*; or, as we should put it, the paternal and the police state, socialism and do-nothing-ism. Both these extremes they discard. They declare themselves partisans of individual liberty, and object to the Prussian state socialism; but they maintain that government must interfere wherever private initiative has shown itself incapable of achieving satisfactory results. The social interests are the important ones.

Another outcome of the Paris exposition of social economics was the Congress of Model Dwellings which decided to start a periodical de-

solely to its particular interests. The *Bulletin de la Société des tations à Bon Marché* proposes to act as the mouthpiece of the movements which look to the erection of model tenements and improved dwellings for the working classes. The society is ready to give to any person plans, statutes, models and all other documents or information which may be of use. And while the society itself expects to find its chief field for work in France, the *Bulletin* is to serve as an international medium of communication. The first number of this volume contains among other things a review of the formation of the society, by its president, M. Jules Siegfried, two interesting essays by Simon and Georges Picot on the moral and economic aspect of the question, and a full account of the  *cité ouvrière*  in Havre. The *Bulletin* will be a welcome addition to the rather scanty periodical literature on the subject.

Over Europe it is fast being recognized that the labor question is a social question *par excellence*. The starting of the *Archiv für soziale Gesetzgebung*, the foundation of *L'Économie Sociale*, and above all the edicts of the German Emperor are pushing the social questions to the forefront. And yet we in the United States are still debating the old, old commercial question. When will people realize that free trade or protection is a matter of very small consequence compared with the momentous problems of the social question? When shall we stop to dissipate our energy in battling about matters of dollars and cents, and turn our efforts to the struggle for manhood and true civilization?

EDWIN R. A. SELIGMAN.

*Population Française: Histoire de la Population avant 1789 et démographie de la France comparée à celle des autres nations au XIX<sup>e</sup> siècle, précédée d'une Introduction sur la Statistique.* Par E. LEVASSEUR. Tome I. Paris, Arthur Rousseau, 1889. — Large octavo, 468 pp.

The distinguished French statistician has combined in this book the results of his profound researches in history and his thorough knowledge of statistics. It may fairly be said to be exhaustive of the subject, and it will once occupy the position of the authoritative work on the population of France. It differs from similar works for other countries, in that it is not a mere compilation or handbook of statistics, but a complete history of demographical facts, illumined by all the light which history and geography can throw upon them. French lucidity displays itself in most effective form, while in exhaustiveness the book is almost German. In the second volume, the author proposes to study "Les lois de la population et l'équilibre des nations." This will doubtless be a valuable contribution to political and social science.

The greater part of the first volume is taken up with the history of the population of France from the earliest times to the present. It divides itself into three periods, of which the first (primitive) has left us no knowledge of the population, the second (mediæval) yields only inexact statements, while the third (contemporaneous) alone gives real, statistical (census) data. It would be presumptuous to criticize the elaborate array of historical facts from which M. Levasseur attempts to conjecture the number and condition of the French people during the early and mediæval periods. None but a special student of the history of the middle ages could do that. But it is extremely interesting to the statistical student to see by what ingenious expedients isolated historical facts are made to yield some indication of the number of the population. For instance, the basis for an estimate of the population of Gaul at the time of Cæsar is found in the mention of one hundred tribes numbering from fifty to one hundred thousand people each. M. Levasseur conjectures 6,700,000 as a probable number for that period. During the next eight hundred years, history speaks constantly of wars and devastations of the land ; so that the population probably decreased. We find a confirmation of this conjecture in a calculation based on a record of the number of people on one of the great demesne estates. The ratio of people to territory in this case, if extended to the whole kingdom, gives a population of 5,284,000 on the present territory of France at the time of Charlemagne. The following centuries were prosperous, and in 1328 we have a record showing the number of hearths. From this, allowing four persons to the family, we get a population of 19,300,000 ; or, allowing four and a half, a population of 21,712,000 for all France. Then followed the Black Death, carrying off one-third of the population, according to the more reasonable authorities, and the Hundred Years' War ; so that the population decreased. After the conclusion of that war, population recovered ; and at the beginning of the sixteenth century we have contemporary authors with enough scientific interest to make estimates of the number of inhabitants. These estimates vary, however, from thirteen to twenty millions, — a fact which shows how little knowledge there was on the subject. The wars of Louis XIV and the expulsion of the Protestants again caused such a decrease as to excite alarm, and in 1697 the government ordered the intendants of the provinces to ascertain the number of inhabitants in their divisions. This first official estimate, although far from being exact, makes it probable that the population of France in 1700 was a round twenty millions. During the eighteenth century we have a great variety of estimates, the best of which places the population, on the eve of the Revolution, at twenty-six millions. Beginning with 1801, an official census has been taken every five years. The whole investigation forms an exceedingly

esting social history of France, and is additionally instructive in showing how the skill of the statistician comes to the aid of historical inquiry in the attempt to construct a picture of past social conditions. Of greater interest to the general reader is the first part of the book, *Introduction sur la Statistique*. It is extremely moderate in tone, the author not claiming for statistics even the name of a science, except in that part dealing with population, which he desires to call "*démographie*." At the same time it contains capital observations on the scope of statistical inquiry, the value of the results, statistical method, graphic illustrations, with a concise history of statistics. I commend it to those who desire an intelligible and lucid statement of the scientific principles by which we are to direct statistical inquiry and measure the value of the results. It will temper the zeal of those over-ardent statisticians who stand ready to take the statistics of anything, from the morality of a community down to the condition of its city sewers; while it perhaps opens the eyes of those scoffers who assert that as good statistics can be obtained for one side of any question as for the other. Statistical inquiry is a method of scientific investigation adapted to certain purposes. To apply the method to unsuitable purposes is as absurd as to call in the jeweller to mend your iron gate, or to send your watch to the blacksmith for repair. The true value of statistics will appear when we comprehend their limitations.

Levasseur points out how necessary it is to arrange inquiries so as not to excite the passions or offend the prejudices of the people from whom information is desired. So late as 1841 there were riots in the streets of Toulouse on the taking of the census, the report having got abroad that it was to be used for fiscal purposes. In France, questions in regard to religious belief are apt to arouse sectarian passions, where the religious differences have not yet been forgotten. Again, a census may easily be led into inquiries which are not worth the expense of making; as for instance in regard to the color of the hair and eyes, which, although sometimes of ethnological interest, is generally valueless on account of the uncertainty of the classification and the mixture of races. Again, some statistical facts are so purely administrative in character that they gather themselves, so to speak; as the convictions for crime, or the imports and exports. Others are not administrative, but may easily be gathered by administrative officers, such as births, deaths and marriages. Still others are neither administrative nor readily gathered by administrative officers, as special facts in regard to agriculture, manufactures, wages, indebtedness. It is much easier to bring the results of the first two classes to some degree of perfection than those of the last, and the statistics of the former are correspondingly more trustworthy. Finally, M. Levasseur points out how by skilful arrangement and com-



bination a few inquiries may lead to a great variety of information. These few illustrations will suffice to show the knowledge and acumen of the author.

R. M. S.

*Darwinism and Politics.* By D. G. RITCHIE, M.A. London, Swan Sonnenschein & Co., 1889. — 101 pp.

It is impossible for a great idea to become dominant in any department of science without affecting men's thoughts on all other subjects that keenly interest them. This is illustrated in our own time by the ideas of the "struggle for existence" and "the survival of the fittest"; from biology they have been inevitably transferred to sociology and economics. Ernst Haeckel used them, justifiably enough perhaps, to prove the impossibility of realizing the ideal of equality which he attributed to socialists, and at the same time to demonstrate, as against Virchow, how harmless Darwinism was to society. Mr. Herbert Spencer and his followers go very much further than this, and regard the two principles as an unassailable basis for a policy of *laissez faire*, and as a justification for denouncing the very moderate amount of restraint upon the individual that English radicals have of late years been advocating. Fortunately the growth of historical culture has been too great to permit Mr. Spencer's sociology to take much hold upon students of economics. But among the professed students of biology, there is not infrequently found a disposition to pooh-pooh efforts at social reform as unscientific; and "the struggle for existence" has already become a phrase in the mouth of the man of the world.

Mr. Ritchie's little essay is a timely criticism of this application of biological conceptions to social problems. He begins by calling our attention to the ambiguity in the term "fittest," and to the fact that the question is much more complex than is often supposed, in that the struggle is not only between individuals, but also between groups in the same nation and between different nations. Then, coming to the demand that natural forces should be allowed free play, he points out the difficulty of distinguishing between "natural" and "artificial" without falling back into the unhistorical conception of a state of nature; and he justly observes that the not infrequent confession on the part of evolutionists, that the mitigation of the primitive struggle has led to a moral advance, concedes the desirability of displacing "natural" by human and conscious selection. There is in truth a struggle of ideas as well as of physical forces, and they have an equal claim to a fair chance. The recognition of this fact leads us to the fundamental difference between social evolution and all other development, namely, the appearance of consciousness. And yet, conscious effort, though we are often

ged to have recourse to it in order to counteract the unrestrained of "natural" forces, is not necessarily in antagonism to them, and frequently operate only to accelerate or facilitate their action. Ritchie strengthens his general argument by specific illustrations, concludes by showing how desirable it is that conscious effort should take the shape of positive legal institutions, partly because they are necessary to give effect to opinion, partly because of their educative influence. The educational influence of institutions is usually overlooked by those evolutionists who magnify the force of heredity. The discussion that is now going on as to whether acquired characteristics are transmitted by descent tends, as Mr. Ritchie remarks, to weaken the claim of heredity as the preponderating element in the formation of character.

W. J. ASHLEY.

*Primitive Family.* By C. N. STARCKE, Ph.D., of the University of Copenhagen. New York, D. Appleton & Co., 1889. 315 pp.

*Indogermanischen Verwandtschaftsnamen.* Ein Beitrag zur vergleichenden Alterthumskunde. Von BERTHOLD DELBRÜCK. [Abhandlungen der philologisch-historischen Classe der Kgl. Sächs. Gesellschaft der Wissenschaften. Bd. xi, No. 5.] Leipzig, S. Hirzel, 1889.—228 pp.

In publishing an English translation of Dr. Starcke's *Die primitive Familie in ihrer Entstehung und Entwicklung* (Leipzig, 1888), the translators have rendered a service to English and American students. In the first place, the book gives an extensive collection of facts and a full review of theories. Besides this, it contains much suggestive criticism and some original points of view. Its field is wider than its title: it treats not merely of the family, but of kinship and of the organization of the clan and tribe.

From Dr. Starcke's point of view (as from Morgan's) it is not the family but the clan which determines primitive kinship. The bond of the clan is community of blood; the family is based upon a mixture of blood. Whether kinship shall be traced through the male line or through the female depends, therefore, rather upon the organization of the clan than upon that of the family. If the wife enters the husband's family we shall find agnatic kinship; if the husband joins the wife's, we find *Mutterrecht*. The prevalent and persistent tendency is in the former direction, towards father-right; and father-right seems to develop somewhat as follows. Clans tend to become exogamous because, according to Dr. Starcke, the man who captures a wife from a neighboring clan avoids all interference with the established family relations



of his own clan. It might be added that it is cheaper to steal a wife than to buy one; and that in primitive society capture is the most respectable means of acquiring property. With wife-capture arises the idea of property-right in the wife, and in the children born of the wife; and this property-right is the basis of father-right and of agnatic kinship. In marriage by purchase, the basis of the husband's and father's right is the same. This, I take it, is what Dr. Starcke means by saying that fatherhood does not rest originally on the fact of procreation, but is essentially "juridical" (pages 121-127); but I am not altogether sure that I understand his line of reasoning. In other passages (*e.g.* on page 37) he seems to distinguish a primitive paternal authority based on pure force, and a later father-right, of a legal character, not based on force at all. But he may mean only that in the development of paternal authority, as in the development of all property rights, there is an earliest stage in which the social sanction has not yet converted force into right.

Society also tends, from the earliest period, to monogamy. Polygamy can never be general, because the number of women is never greatly in excess of the number of men. Polyandry Dr. Starcke regards as sporadic, rejecting McLennan's theories. He also rejects the theory that there is any necessary connection between the levirate or the *nijoga* and polyandry. So far his views coincide with those of most writers. But Dr. Starcke goes further: he rejects entirely the theory of primitive hetairism or promiscuity, and the derivation of mother-right from the impossibility of determining fatherhood. He disputes the priority of mother-right. Explaining mother-right on "residential" grounds, he tries to show that a community originally agnatistic may change its habits and derive relationship entirely through the female line. In a cattle-breeding community, for instance, men make it their first object to increase the number of stock. In such a community the head of the family will sell his daughter as early and for as high a price as possible. In the agricultural community, on the other hand, the chief demand is for labor. In such a community, the head of the house will not only oppose the departure of his daughter; he will seek to induce her wooer to become one of his household. Hence the herding community will recognize agnatistic kinship only, while mother-right will appear with the development of agriculture (pages 99, 100). This argument seems to me singularly fallacious. It bases the probability of wife-purchase entirely on the willingness of the woman's father to sell. But it takes two to make a bargain; and it may be insisted, with more reason, that the development of wife-purchase will depend on the desire of the wooer to buy. If this point of view be accepted, Dr. Starcke's data afford a conclusion directly opposed to that which he reaches. The herding community will maintain mother-right, because the man does not care

urchase a wife ; but in the agricultural community, where labor is prime requisite, the man who cannot steal a wife from a neighboring hostile community will buy one within the tribe as soon as he is able. Starcke's whole attack upon the theory of primitive mother-right is to me inconclusive. He unquestionably shows that mother-right exist, on "residential" grounds, when fatherhood is not uncertain. Surely an institution which has arisen on one ground may persist on another. He unquestionably shows that father-right may exist on "juridical" grounds (*i.e.* as a property right), when the customs of the community are such as to render paternity anything but certain ; and insists that if father-right does not rest primarily upon procreation, mother-right can never have rested upon the uncertainty of the father. This does not seem to me a necessary inference. He further endeavors to show that the *couvade* — which may be best described as the "concealment" of the husband — does not point to primitive mother-right or present an attempt to find an analogous basis for father-right (pages 31, 32). Here again Dr. Starcke gives reasons which might account for the persistence of the institution, but which seem inadequate to explain its origin. His statement that the Arowaks and Macusis, who practise the *couvade*, have the system of exclusive maternal kinship, is borne out by the data he furnishes on pages 37, 38.

Dr. Starcke's conclusions on this point are conditioned by certain premises which are hardly likely to command general acceptance. According to his canons, we should never seek the origin of a custom in primitive conditions if its existence is explicable under contemporary conditions. He is disinclined to reason back from symbols to realities and from fictions to primitive facts.

Delbrück's study of *Indo-Germanic Kinship Names* is a work of wider scope than Dr. Starcke's, but certainly of no less value. The scope of the treatise is purely philological, but in the last forty-five pages (*letzter Theil*) the author sums up his conclusions. The ancient kinship system, he thinks, is strictly agnatic. In the oldest literature of the Indo-Germanic peoples the father's brother plays a more important part than the mother's brother. There is no philological evidence that polyandry was customary in primitive conditions. There is no philological evidence of primitive promiscuity and of primitive mother-right. On the other hand, the philological evidence does not, and cannot, disprove the mother-right theory. If the anthropological arguments in favor of that theory be deemed conclusive, all the philologist can say is that the Indo-Germanic peoples seem to have emerged from promiscuity and mother-right before that period in their development with which Indo-Germanic philology deals. Dr. Delbrück's conclusions are largely identical with those of Dr. Edward Washburn Hopkins, whose treatise on the *Ruling Castes in Ancient India* he

repeatedly cites. In praising the work of Dr. Hopkins, Dr. Delbrück pays a graceful compliment to American scholarship: Dr. Hopkins, he says, has treated his immense mass of material "mit amerikanischer Genauigkeit und Uebersichtlichkeit."

MUNROE SMITH.

*Notes pour servir à l'Histoire littéraire et dogmatique du Droit International en Angleterre.* Par ERNEST NYS, professeur à l'Université de Bruxelles. Première partie, Bruxelles, 1888. — 148 pp.

This is the first part of a work intended, as indicated by the title, to serve as a literary and dogmatic history of international law in England. While the term international law implies the existence of a general system of conduct, recognized and applied by all nations alike, yet we find in the history of each independent state something of especial interest in the development of particular doctrines. The work of Professor Nys, so far as published, does not attempt an exposition of the relations of England with other powers. It purports merely to show, under certain heads, the practices prevailing in that country, especially where they disclose either a simple difference from rules followed in other countries, or a contribution to the progressive development of international law. It is observed that during the second half of the middle ages, two questions which strongly affected the development of international law on the continent had comparatively little effect in England. These were the questions of the Church and the Empire. It was not through lack of effort on the part of the Church to bring the English people effectually under her dominion that they retained their independent position. During considerable periods of time the authority of the Pope was exerted, with a success often varying with the temper and disposition of the reigning prince. But the national spirit of the people was so strong that any concessions which were obtained served in the end only to cause a more emphatic assertion of independence.

The development of international doctrines in England was influenced far more by the civil than by the canon law. As the authority of the latter declined, that of the former, though for a time obscured, gradually took its place and increased. Ayliffe, in his history of the University of Oxford, referring to the condition of things about the middle of the sixteenth century, says that "the books of civil and canon law were set aside to be devoured with worms as savouring too much of popery." In 1536, Thomas Cromwell, as Chancellor of the University of Cambridge, enjoined that "no one should thereafter publicly read the canon law, nor should any degree in that law be conferred." A similar injunction was proclaimed as to Oxford. But although the civil law, be-

aked with the canon law in disfavor, suffered for a time in credit and nce, various causes operated to restore and strengthen its hold. It ept alive in the universities, and the changes wrought in the rela- of England with other European powers in the sixteenth century ted to its study an importance which can scarcely be overesti- l. In 1524 first appeared the great work of Grotius, entitled *De Belli et Pacis*. It may be said to have appeared in the fulness of for it was then that nations were beginning to take a wider view ir mutual duties and relations, and Grotius' appeal to reason and ience in international dealings found a response and an application could not have been expected earlier. His influence was felt in Britain no less than on the continent. Having held for centuries itude of isolation, England then began to enter effectively into the rt of European nations, in which the individuality of her develop- and the growth of her physical power, especially at sea, had pre- her to play a striking part. The system into which she entered n organization governed by the conceptions of the Roman law, udy of which then became essential. In 1549, a visitation of the rsity of Cambridge was made for the purpose, among others, of iving instruction in the civil law; and on this occasion the Duke merset, then Protector of the Kingdom, wrote to Bishop Ridley, f the visitors, saying: "And we are sure ye are not ignorant how sary a study that of civil law is to all treaties with foreign princes trangers, and how few there be at this present to the King's maj- service therein."

e present part of the work of Professor Nys only brings us down to ime when the influence of England in European affairs became t. It thus treats what may be regarded as the separately forma- eriod of juridical notions in that country. It is hoped that in his e discussions he will trace the part played by England in European with a view especially to illustrate her share in the development ernational law as we find it to-day.

J. B. MOORE.

*lems of Greater Britain.* By the Right Hon. Sir CHARLES ENTWORTH DILKE, Bart., author of "Greater Britain," *etc.* With maps. ndon and New York, Macmillan and Co., 1890.—12mo, pp. xii, 738.

*ty Years of Colonial Government.* A selection from the patches and letters of the Right Hon. Sir George Ferguson Bowen, ernor successively of Queensland, New Zealand, Victoria, Mauri- s, and Hong Kong. Edited by STANLEY LANE-POOLE. Two vol- es. London and New York, Longmans, Green and Co., 1889.— o, pp. viii, 460; viii, 467.

Viewed in the light of the travel, the reading and the reflection that were needed for its production, Sir Charles Dilke's book, as a contribution to political science, is fully worthy to rank with the great works of de Tocqueville and Bryce. Its scope is vast ; its treatment detailed but concise. Every page is crammed with important facts or equally important inferences. Nothing more can be attempted here than the most general indication of the subject-matter and of the author's point of view.

After an introduction strikingly free from rhetorical ornament, Sir Charles gives a rapid but interesting survey of the British possessions in North America. No one who is interested in the exact state of Manitoba, in Canadian protection or in the stability of Sir John Macdonald's government, should fail to read this portion of the book. In the fourth chapter of this part, the author discusses the future relations of Canada to the United States, reaching the conclusion that there is no likelihood of any immediate union. He has a few words to say about ourselves and incidentally, and justly, criticizes Mr. Bryce for not having dwelt enough on the race question in the South. While much of what Sir Charles himself says on this subject is true, he can hardly be said to have added to our knowledge. Part II is devoted to Australasia, and the space allotted is nearly twice that given to Canada. Victoria, New South Wales and Queensland have each a special chapter, the other Australasian colonies, including, of course, New Zealand, being treated together. The author's great power of grouping facts, his genial descriptive faculty, his knowledge of character, and his wide literary sympathies are all seen at their best in these chapters, which alone would have made the reputation of a lesser man. To particularize is impossible, but attention may be called to the fairness with which Sir Charles, himself a free trader, discusses the question of Australian protection ; and the regret may be expressed that he did not give us more information as to the constitution and working of the various courts of law. The word "court," by the way, does not occur as an independent subject in the admirably full index which makes the volume so convenient a work of reference.

Part III treats of South Africa, to the importance of which as an imperial possession Sir Charles is fully alive. A noteworthy account is given here of the Transvaal and its able President, Paul Kruger ; and one could wish that the notice of Sir Hercules Robinson, one of England's most capable governors, and his policy had been more extended.

Part IV is devoted to India, and nearly one half of its space is occupied with the momentous question of Indian defence. The author, whose knowledge of military affairs is well known, has many criticisms to make on the present condition of the Indian army, and he points out

great effect the danger of allowing Russia to move her frontiers westward. He earnestly recommends an alliance with China, for whose power he has great respect, believing in fact that the day is not far distant when Russia, China, and the English-speaking peoples will divide the world among them.

Part V gives a short and interesting survey of the Crown Colonies, and Part VI considers the "Problems" that give the book its name. Here the author's comprehensive grasp of facts and distinguished logical power do excellent service. Labor, the liquor laws, religion, education, colonial democracy — these are some of the topics treated. It is obvious that they appeal to every thinking man. Indeed one of the conclusions that Sir Charles is constantly drawing is that England must look more and more to the colonies for models in legislation and for the solutions of the problems that are confronting her statesmen at home. But this conclusion is just as applicable to the United States as to England. Australia has already taught us how to cast a pure ballot, though we were casting ballots when she was in her cradle; who knows what she will teach us in the future? Our labor reformers, our protectionists, our state socialists and their adversaries can all find much in this book to set them thinking.

Part VII treats the greatest problem of all, *viz.* the future relations between the mother country and the colonies; and Part VIII the old problem of "Imperial Defence." In regard to the former, Sir Charles does not think that "the idea of imperial unity has made rapid progress of a practical kind;" in regard to the latter, he seems hopeful for the security of Great Britain, especially if she will not trust too exclusively to her navy.

What can be said in conclusion is that every one should read the book for himself. The author has done for "Greater Britain" what Mr. Bryce has done for the United States; and if his method of treatment, as compared with that of the latter, is extensive rather than intensive, — if we miss at times Mr. Bryce's wonderful probing, — this is naturally accounted for by the greater scope of his subject. Sir Charles has given fresh proof of what has long been a belief of thoughtful observers, that in qualifications for enlightened statesmanship, he is quite the equal of any living Englishman.

It is well nigh impossible to lay down Sir George Bowen's book without feeling that its two volumes might with propriety have been reduced to one; but it is equally impossible to take leave of the veteran governor without feeling the highest respect for his character and no little satisfaction at having been allowed to read his own record of his life. For his own record, Mr. Stanley Lane-Poole occupying a properly subordinate position in the presentation. Possibly the dinners given in



honor of Sir George are described at too great length, and his speeches and despatches have not always, perhaps, been sufficiently abridged. This indifference to the laws of proportion and a tendency to repetitions constitute the chief defects of the work, which is not without interest, however, to the student of politics.

The title-page gives some idea of Sir George Bowen's varied experience. Appointed governor of Queensland in 1859, he found himself, when only thirty-eight, in a position of responsibility from which many an older statesman would have shrunk. Moreton Bay had received with its new name a new constitution, and it was Sir George Bowen's duty to teach his people how to use their privileges wisely. His success was great, and it is hard to recognize in the Queensland of his time (1859-1868) any resemblance to the sturdy young would-be republic that has been giving the mother country so much trouble of late. The governor's life was not a bed of roses, however. Among the difficulties which he was obliged to meet and which he met successfully, was that one so familiar in our own history—the demand for an inconvertible paper currency. In 1868 Sir George was transferred to New Zealand, where he had the credit of bringing to an end the long and troublesome Second Maori War. In 1873 he received “the ‘blue ribbon’ of colonial governments — that of Victoria.” Here the student will find a good account of one of those curious parliamentary deadlocks for which Australia is famous. The next eight years of Sir George Bowen's life were divided equally between the Crown Colonies of Mauritius and Hong Kong. Naturally these administrations are not as important to the student as those of the three great Australian colonies, but no one will grudge the time spent in reading of the delightful old French life in Mauritius or of the excursions that Sir George found time to make in China and Japan. The second volume ends with an account of a commission to Malta in 1888 and a reprint of Sir George Bowen's pamphlet on *The Federation of the British Empire* — an idea to which his whole book is distinctly partial.

W. P. TRENT.

*A Manual of the Constitutional History of Canada.* By JOHN GEORGE BOURINOT, LL.D., F.R.S. Can., Clerk of the House of Commons, Can. Montreal, Dawson Brothers, 1888. — 238 pp.

*The Constitution of Canada.* By J. E. C. MUNRO, Professor of Law, Owens College, Victoria University. Cambridge, University Press, 1889. — 356 pp., with Table of Cases and Appendix.

The literature on the constitutional history and law of Canada has increased with considerable rapidity during the last few years. The

ct is an interesting one to the student of political science, and research and ability are displayed in the works that are appearing. Bourinot's little volume purports to be a sketch of the constitutional history of Canada from the earliest period to the year 1888. As stated in the prefatory note, it is a revised edition of those chapters of the author's larger work on *Parliamentary Practice and Procedure in Canada* which are required for the study of political science in the University of Toronto. As a matter of fact, it can scarcely be called a constitutional history, though it is undoubtedly a very complete and instructive manual of the existing constitution. Only the first chapter, consisting of six pages, is devoted to the period of the French régime. This allows little space for even the scantiest sketch of a period which covers more than two centuries of time ; which saw the feudal estates and the municipal government of Paris firmly established ; and which is characterized by three distinct governmental systems : that of the Viceroys, 1540-1627 ; that of the Company of New France, 1627-1663 ; and that of the Sovereign Council, 1663-1760. The constitutional history of this period furnishes an explanation of the bitter contests and retarding incongruities of the preceding epoch of English domination. Only twenty-five pages are devoted to a review of this later period, 1760-1841, though it includes five distinct systems of government which were tried with the struggling colonies : that of the Military, 1760-1763 ; that of the King's Proclamation, 1763-1774 ; that of the Quebec Act, 1774-1791 ; that of the Constitutional Act, 1791-1838 ; and that of the Provisory Act, 1838-

Only very brief references are made to the more striking features of these systems, and we obtain but a superficial idea of the history of political institutions during these eighty years.

With this slight sketch of the institutions established by the French and of the systems employed by the English we are brought to the period of Canada under local self-government, since 1841. Dr. Bourinot gives an outline of Lord Durham's report on the political difficulties of Canada, and a summary of the new constitution under the Union Act of 1840, by which Upper and Lower Canada, after a period of separation, were re-united and the new era of responsible government was inaugurated. He then reviews the events which led to the union of the Canadian provinces into the Dominion of Canada. This was effected by the passage of the British North America Act of 1867 (30 and 31 Vict. c. 3) which with three amendments (34 and 35 Vict. c. 28, 38 and 39 c. 38 and 49 and 50 Vict. c. 35) forms the text of the present constitution. The remainder of the book is devoted to a commentary on the acts and the judicial decisions and rules of construction regarding them ; while the appendix contains a copy of each act. Dr. Bourinot's description of the existing constitution of Canada is less elaborate than



Professor Munro's, but he gives the reader a clear outline of its chief characteristics. His judgment of its operation, and of the future of the Dominion, is agreeably sanguine :

At last we see all the provinces politically united in a confederation, on the whole carefully conceived and matured ; enjoying responsible government in the completest sense, and carrying out at the same time, as far as possible, those British constitutional principles which give the best guarantee for the liberties of a people. With a federal system which combines at once central strength and local freedom of action ; with a permanent executive independent of popular caprice and passion ; with a judiciary on whose integrity there is no blemish, and in whose learning there is every confidence ; with a civil service resting on the firm basis of freedom from politics and of security of tenure ; with a people who respect the law, and fully understand the workings of parliamentary institutions, the Dominion of Canada need not fear comparison with any other country in those things which make a community truly happy and prosperous.

Professor Munro's book is written in the form of a legal treatise. It is the most scientific—and possibly the best—text-book for the student of the constitutional law of Canada that has yet appeared. Besides the usual table of contents—which, by the way, is particularly well constructed—it contains a table of cases, a table of statutes, and an appendix which gives the text of the more important documents. The first chapter is devoted to an outline of the existing constitution of Canada, comparison being made with the constitutions of England and the United States. The second chapter is a concise *résumé* of the constitutional history of the various provinces of Canada. Beginning with the third chapter, Professor Munro devotes the remainder of the book to a strictly scientific analysis of the existing constitution. He derives the legal rules and constitutional customs which form the “constitutional law and custom” of Canada from seven sources, as follows : Imperial acts, Dominion acts, orders in Council, orders of Dominion and Provincial legislatures, usages and letters patent and instructions to the governor-general. After defining the scope of these sources, the author proceeds to set forth the law of the constitution.

Beginning with the provincial legislatures, he discusses their composition, and the details of their action and of their relations with the other departments. These legislatures consist, in general, of a lieutenant-governor appointed by the governor-general, a legislative council appointed by the lieutenant-governor, and a legislative assembly elected by the qualified electors. In action the legislatures present no features especially distinguishing them from other constitutional law-making bodies. In the provincial executive we find a strong bond of con-

n with the central government. The chief executive, the lieutenant-governor, is appointed by the governor-general of the Dominion. He presides over the administration of the government and is advised by a cabinet holding the confidence of the majority of the legislative assembly. The provincial judiciary consists of a well-graded system of courts, with judges appointed in some cases by the provincial and in others by the Dominion executive.

In disposing of the provincial institutions, Professor Munro takes up the discussion of the Dominion government, and pursues the subject through the same divisions and in substantially the same categories that were followed in the treatment of the provincial legislatures. There are three elements which must be recognized in the constitution of the legislature of the Dominion, *viz.* the crown, the governor-general and the parliament.

This last is composed of the usual two chambers — the names, the Senate and House of Commons, showing the influence at once of the Dominion's great neighbor and of the mother country. In treating of the executive, the author gives us the history of the office of governor-general, as well as the discussion of his duties and powers. Being appointed by the British crown, this officer forms the link of connection between the Dominion and the mother country. In his relation to the Dominion he is assisted by the Privy Council, which is simply his cabinet of ministers, who must have the confidence of the House of Commons.

Professor Munro's analysis of the central judiciary distinguishes three classes of tribunals: 1. Supreme and Exchequer Courts; 2. Courts for appeals from provincial courts of controverted elections; 3. The Maritime Court of Ontario. Generally the Supreme Court is the appellate court of last resort, but appeals from the judicial committee of the (Imperial) Privy Council may sometimes be taken to this latter tribunal. As to the appointment and tenure of the judges, it is shown that the British practice is followed, — appointment by the executive and tenure during good behavior.

The most important question in a federal system like that of Canada is the distribution of the subjects of legislation between the Dominion and provincial legislatures, together with the rules of constitutional interpretation in case a conflict arises. The author's chapter discussing these provisions under this head is one of his best. The treatise concludes with a chapter on the Dominion control of the provinces and on the Imperial control over the Dominion. Professor Munro leaves the general impression that the control in each case is very liberal.

The usefulness of this treatise is greatly enhanced by the typographical make-up. Judicious spacing and paragraphing materially aid the reader in grasping the logical division of the subject and the

sequence of the parts. Abundant citations from the original authorities, moreover, afford every facility to the reader for verification or further research.

THOMAS D. RAMBAUT.

*The Federal Government of Switzerland.* By BERNARD MOSES, PH.D. Oakland, California, 1889. — 256 pp.

Switzerland is certainly now receiving a fair share of attention from students of politics. Within a short time two English translations of the text of its federal constitution have appeared, and also two systematic works on the public law of the confederation, besides the chapter on the same subject in Wilson's work on *The State*, and many magazine and review articles. Of the two systematic works — that of Adams and Cunningham, previously reviewed in the *POLITICAL SCIENCE QUARTERLY*, and the present one — it would be difficult and even useless to attempt to decide which is the better. They are both valuable and they supplement each other well. The work of Moses is evidently that of a man much more familiar with the course of speculation in the field of comparative politics and with the facts relating to federal government in general, than are the authors of the other book.

The present work is not so large as the earlier, and as it contains considerable information about other federal governments and some theoretical discussions, it omits many topics fully presented in its predecessor. Indeed, Moses' work should rather be called an essay on comparative constitutional law of federal unions, with special reference to Switzerland. The chapter on "Distribution of Power," for example, containing some forty pages, devotes only three of them to Switzerland, — the rest being occupied with an interesting essay on the tendency in a growing government first to the concentration and then to the diffusion of power. The chapter reminds one strongly of the treatment of the same subject in the work on *Comparative Politics*, by the same author and Mr. Crane jointly.

Among the governments receiving much attention in the book are those of South America. This is the more welcome as so little work has been done in this field by English scholars. Mexico, the Argentine Confederation, Columbia and Venezuela receive special attention, — Canada, Germany and the United States being frequently referred to by way of comparison. While most of the facts given by Professor Moses about the Swiss government are also contained in the work of Adams and Cunningham, yet they are often put in different connections, so as to bring out more clearly their significance. Students of comparative politics will recognize this advantage and will agree, I think, that

essor Moses has made a valuable contribution to our stock of works on political science—a stock which, although rapidly growing, is at present meagre enough.

E. J. JAMES.

*Éléments de Droit Administratif à l'usage des Étudiants des Facultés de Droit* Par J. MARIE. Paris, L. Larose et Forcé, 1890. 651 pp.

It is unfortunate for the study of comparative administration that French writers on French administrative law follow so closely, in the contents of their books, the decree which governs the curriculum of the law schools. For, while this decree undoubtedly indicates the subjects which, from the practical point of view, are of the greatest interest to French lawyers, it does not require the student to devote time to a long series of matters which, from the point of view of comparative administration, are of the utmost importance. The result is omission must necessarily be that such subjects are either not treated by the ordinary French writers with the fulness which they deserve, or else are absolutely neglected.

The latter is often the case in the book before us. While M. Marie treats very fully such matters as the organization of the administration and the general powers of the most important officers, yet when he comes to what the French call *matières administratives*, i.e. the various subjects in which the administration has jurisdiction, his book leaves very much to be desired. Almost the only such matters which are given any treatment at all are the exercise of the right of eminent domain, which in French works on administration receives an amount of attention of all proportion to its importance to the student of comparative administration; the matter of highways, which, like that of eminent domain, is extremely technical; the financial administration, and the judicial administration. The full treatment of this latter subject is desirable, however, on account of the fact that the law of recruiting has been very much modified by recent legislation.

The professed aim of the author has been conciseness. As the title of the book indicates, it is the elements of administration rather than the special development of all points in the administrative law, which was undertaken to set forth. Though this fact will make the book useful to the beginner, it detracts from its value to one who has already mastered the elements and is in search of information on details. This is not only because of the elementary character of the work, but also because in his efforts to be concise the author has seen fit to omit the authorities for his statements. Although he assures us in his preface "il n'est pas . . . une affirmation, une ligne de ce livre qui n'aient

été vérifiées et controlées," still the student always feels more confidence in a work which contains references for all important statements. It seems as if the necessary references could have been made without yielding, as M. Marie seems to think inevitable, to any "goût d'une érudition parfois assez encombrante."

In the very beginning of the work, a peculiar classification of the law is adopted, which certainly has its merits, as clearly distinguishing a branch of law which has not always been sufficiently differentiated. I refer to that part of constitutional law which American writers have designated the bill of rights, *i.e.* those fundamental principles which guarantee to the individual a sphere of liberty upon which the government may not encroach. This branch of the law it has been the peculiar province of American political science to develop. In France, however, it cannot be said to exist, at least so as to bind all the branches of the government. The legal rules determining such sphere have not been put into the present French constitution, but are to be found in the ordinary law of the land, which is passed and amended and repealed by the legislature. It is rather remarkable, therefore, that a Frenchman should take special pains to assign to such rules a distinctive character. It is a sign of the adoption in France of what we in the United States have been working out with so much pains during this century. But while we can commend this attempt to distinguish a separate division of the law, we must protest against the name which the author has adopted to designate it. He calls it *droit public proprement dit*. But this term is already appropriated by science to designate what the Germans name *Verfassungsrecht*, *i.e.* the law organizing the great public powers and authorities in the government and determining their relations one to another.

Taking M. Marie's book for what it claims to be, an elementary treatise on the French administration prepared mainly for the use of students, it may be said without hesitation that the work is well done and that the principles laid down in it are clearly and concisely formulated.

F. J. G.

*A Treatise on the Law of Public Offices and Officers.* By FLOYD R. MECHEM. Chicago, Callaghan and Company, 1890.—cxvii, 751 pp.

The probable reason why no book has ever been written in the English language upon the law of officers is that officers have never occupied so important a place in either England or the United States as upon the continent. The English idea of an officer has always been that he was simply a private citizen, who for the time being was aiding in the

gement of public affairs, and to whom the legal rules governing relations of ordinary agents might be applied. The officer was led as simply the agent of the government. At the same time, however, the gradual growth of the functions of government has brought being a class of almost professional officers, quite unknown to the English law, and has so largely increased the sphere of action of officers that the decisions of the courts in regard to the relations of persons holding official position have become very numerous. In

decisions the courts have gradually departed from the original notion that the officer is simply a private person who happens to be discharging public functions and to whom the ordinary rules of private law can be applied. But up to the present time the officers have not been such important members of society as to have made necessary incorporation into the statute law of the various legal rules which govern their relations. On this account the book under consideration is a very welcome addition to the literature of the official relation.

The original conception of an officer in the English law has, however, greatly influenced the author of this work. The subject is treated not altogether from the standpoint of the private lawyer, or at any rate from that of the practising lawyer. No attempt is made at such classification of officers as would be of value to the student of political science and administration. The book will not give the reader a good idea of the official system, because in many instances the details which regulate the details of the official relation are hardly touched upon. At the same time, however, Mr. Mechem has done a valuable service merely by gathering together in an accessible form the decisions of all the courts of this country relative to the official relation.

The "Table of cases cited" informs us that reference is made to more than 6232 cases. These cases are, moreover, quite scientifically arranged.

Mr. Mechem starts out by showing, or at least by trying to show, who are public offices and who are public officers. He does this, however, more by a method of enumeration than by the formulation of a general principle. In the way so dear to the hearts of English and American law-book writers, he begins with the letter A (in this case the Assessor) and ends with the letter W (Watchmen of public buildings) and informs his readers what the courts have decided as to the official or non-official character of all persons connected with the government whose titles begin with any of the intervening letters. It must be said that such a method, though probably of use to the practising lawyer for purposes of reference, does not throw much new light upon the vexed question, what is a public office. The reader rises from the consideration of this list of positions with a somewhat confused

feeling that the question is a very difficult one to decide and, we may add, with a strong conviction that the writer of this book, at any rate, has not decided it. Still one can hardly blame Mr. Mechem for not having added anything to the science of this subject. The question, what is an office, is one which cannot be answered from pure theory, but requires for its determination a careful consideration of the judicial decisions. These, however, are very conflicting and show a marked tendency to include under the term officer almost every person, whatever be his station, who is permanently connected with the government.

The other questions which Mr. Mechem treats are those of eligibility and the method of filling offices; the authority, duties and liabilities of officers; the judicial control which is exercised over them; and the methods of terminating the official relation. Some of these matters are treated with a commendable fulness, especially those which are of particular interest to the practising lawyer. This characteristic is only natural, since the book is written for the profession rather than for the student. Some matters of immense importance are passed over with little more than a bare mention. Such for example is the case with the subject of impeachment. But still, even admitting that the work has been written mainly with the idea of lessening the labors of the profession, it will be of great value to the student; for the tedious work of collecting the cases on this most important subject of administration is now done.

F. J. G.

*Wörterbuch des Deutschen Verwaltungsrechts.* In Verbindung mit vielen Gelehrten und höheren Beamten, herausgegeben von Karl von Stengel. Vol. I. Freiburg, i. B., J. C. B. Mohr (Paul Siebeck), 1890. — viii, 895 pp.

This dictionary (or cyclopædia, as we should call it) of German administrative law is one of the things which students of German administration have long felt the need of. While the French law has been treated most fully in the various dictionaries, such as Block's and Béquet's, the German law has, up to the appearance of this work, been treated only in the various commentaries, which, however excellent in their way, have never offered the student such a wealth of material as a dictionary of this kind will of necessity contain. The first volume begins with *Abgaben* and ends with *Kunstschulen*; thus containing all that will be said on the general subject of local government. The editor, Professor von Stengel, is already well known to students of German administration through his most excellent work on the organization of the Prussian administration and his more general work on German administrative law. As professor of law at the university of Breslau, most of his work



er has been in the domain of administration. He is therefore  
tly well fitted for the task here undertaken. As the title of the  
indicates he has availed himself of the aid and collaboration of  
n most celebrated in Germany in the branches which the dic-  
attempts to cover. Among the contributors we find such  
as Gneist, Kirchenheim, Hinschius, Laband, Sarwey, Stengel,  
Mayr, Reitzenstein, Munsterberg, Zorn, G. Meyer and others, who  
have made for themselves reputations both in the special lines to which  
articles are devoted and in the general subject of administration.  
A particularly valuable feature of the dictionary, and one which will  
make its possession indispensable to others besides mere administra-  
tors, is the fact that, wherever this is possible, the subjects are  
treated from the economic and financial as well as from the purely ad-  
ministrative point of view. Take for example the space devoted to the  
*Gemeinde*. We find an article on *Gemeinde* in general, and others  
on *Gemeindeanlehen*, *Gemeinde-Bezirk*, *Gemeinde-Dienst*, *Gemeinde-  
verwalter*, *Gemeindehaushalt*, *Gemeinde-Vermögen*, etc., down to *Ge-  
meinde-Verwaltung*. The advantage of such an arrangement is that one  
desires information upon some particular part of the administration  
of the *Gemeinde* is not obliged to read through the whole  
chapter. Another noteworthy characteristic of the dictionary is  
the bibliography and list of *Quellen* attached to each of the articles.  
This single feature makes the work simply invaluable.  
Having so many articles by so many distinguished men it is almost  
impossible to select any as pre-eminent without casting an undeserved  
reflection upon the others. Mention ought to be made, however, of those  
of von Mayr, of Munich, who has done a large part of the financial  
and statistical work, and especially of his titles *Abgaben* and *Erbschaft-  
steuer*.  
The dictionary is to be completed in a second volume, whose appear-  
ance may be expected shortly.

F. J. G.



## RECORD OF POLITICAL EVENTS.

[From November 1, 1889, to May 1, 1890.]

### I. THE UNITED STATES.

#### I. THE NATIONAL GOVERNMENT.

**FOREIGN RELATIONS.** — **The Samoan treaty**, negotiated between the United States, Great Britain and Germany in June, 1889, was ratified by the Senate on the 3d of February, 1890. The basis of the instrument is a recognition of the independence and neutrality of the Samoan Islands. It is provided that Malietoa be restored to the throne, and that his successor shall be chosen in accordance with the laws of the natives. For the determination of all questions arising under the treaty, as well as a very wide range of controversies involving foreigners and natives, a court is established, presided over by the "Chief Justice of Samoa," who is to be appointed by agreement of the three powers, or, if they cannot agree, by the King of Sweden. Lesser authorities are appointed for the determination of special matters of difficulty, and an elaborate code of regulations is laid down to govern the intercourse between foreigners and the natives. — A new **extradition treaty with Great Britain**, negotiated by Secretary Blaine and the present British minister, Sir Julian Pauncefote, was ratified by the Senate on the 18th of February, 1890. Nine new crimes are brought within the scope of the process of extradition, *viz.* manslaughter, counterfeiting, embezzlement and cognate offences, fraud by agent or corporation officer, perjury, rape, abduction and kidnapping, burglary, piracy, several crimes on the high seas, and offences against the laws of both countries for the suppression of slavery and slave-trading. Offences of a political character are specifically excluded from the operation of the treaty; and, in any doubtful case, the country in whose jurisdiction the fugitive is at the time shall decide finally. Article three provides that no person shall be triable for an offence other than that for which he was surrendered, until he shall have had an opportunity to return to the country which gave him up. The Senate made certain amendments to the document as submitted, defining manslaughter, which is not precisely the same in the two countries, and dropping from the list of offences that of obtaining money under false pretences. An important difference between this treaty and that rejected by the Senate in President Cleveland's term is the absence in the present treaty of the clause contained in the earlier which provided for extradition in case of "malicious injuries to property," whereby the life of any person shall be endangered, if such injuries constitute a crime according to the laws of both the high contracting parties." The treaty went into effect April 4. — The difficulties with **Canada** in reference to the **seal-fishing in Behring Sea** have been under consideration between the British minister and the State department, though

cial announcement as to results has been made. Sir Charles Tupper, Canadian High Commissioner at London, arrived in Washington in the part of February to take part in the negotiations. — **The International Conference** at Washington, which was in session when this RECORD concluded its work December 31. No official report of its conclusions has been made public; for the delegates of each nation will report to their government in the form of recommendations, and legislation will be necessary to give effect to these. All but five of the sittings of the conference were devoted to the discussion of rules for avoiding collisions at sea, in order to prevent all confusion and uncertainty from the code. Other subjects considered and passed upon were: Internationally uniform systems of buoyage, lighting vessels and of signals for giving notice of approaching storms. A proposition for a permanent international marine commission was not adopted. — **The International American Conference**, or "Pan-American" as it is popularly called, was in regular session from November 18 to 29. The following recommendations were adopted by the conference: That for the prevention of epidemics, uniform sanitary regulations be adopted by the nations, on the basis of those established by previous sanitary congresses among the states of South America; that the treaties on international patent and trade-mark rights, agreed to by the countries of South America at the recent congress at Montevideo, be subscribed to by the remaining nations of the hemisphere; that the nations bordering on the Gulf of Mexico and the Caribbean Sea enter upon some arrangement for establishing first-class steamship service between their several ports by government aid; that on the Atlantic coast government aid be given to steamship lines between the United States and Rio Janeiro, Montevideo and Santos, and on the Pacific, to lines between San Francisco and Valparaiso, touching at intermediate points — all subsidies to be under careful and judiciously drawn; that all possible expedients be adopted to facilitate the transmission of merchandise through one country to another, and that customs administration be as far as possible simplified and made uniform; that reciprocity treaties be negotiated between the various American republics, each conceding the free introduction of the peculiar products of each; that a monetary convention of the powers concerned be held within a year to arrange a system of uniform coinage; and that the metric system of weights and measures be uniformly adopted. Not all of these recommendations, however, were in a sufficiently definite form to amount to more than a general expression of opinion.

**CONGRESS.** — The Fifty-first Congress began its first session December 2. The organization of the **House of Representatives** was effected by the election of Mr. Reed, of Maine, as speaker, Mr. McPherson, of Pennsylvania, as clerk, and the minor officers generally as determined upon by the Republican caucus. — **The President's Message** announced general good-will and cordiality in our relations with other governments. Whatever questions were pending were declared to be in process of satisfactory adjustment. In domestic affairs, general prosperity was announced. The surplus in the Treasury for the last fiscal year, above all provision for the sinking fund, was \$129,129,590. For the ensuing year the estimated surplus is \$43,569,522.30.

The President recommended immediate action by Congress toward reducing treasury receipts so as to prevent the accumulation of surplus funds. The expedients necessary to get the money back into circulation were often of doubtful propriety, and the loaning of public funds to banks without interest he especially considered to be an unauthorized and dangerous policy. Such deposits now outstanding should be withdrawn and applied to the purchase of bonds. A revision of the tariff law was recommended, both as to administration and schedules. Assurance should be given, however, that necessary changes should be so made as not to impair the just and reasonable protection of our home industries. The free list might be extended by the addition of articles not competing injuriously with domestic products, and the internal taxes upon tobacco and upon spirits used in the arts might be removed. Upon the currency question, the President expressed himself fearful as to the permanence of the existing harmony between silver and gold, but was not prepared to discuss fully the proposition of the secretary of the Treasury. Appropriations were recommended for adequate coast defence and harbor improvement. The President recommended that Congress grant pensions to all honorably discharged soldiers and sailors who are dependent upon their own labor for maintenance and, by disease or casualty, are incapacitated from earning it. He reported progress in the way of civil service reform, especially through making public the list of eligibles and through the extension of the law to the railway mail service, and asked for additional appropriations for the commission. National aid to education was recommended, especially for regions where the emancipated slaves burdened the taxpayers. Mr. Harrison saw no stronger constitutional objection to such aid than to what had already long been given in the form of land-grants. He thought it best, however, to limit the aid to an annual appropriation, so as not to tempt the local authorities unduly to postpone assuming the whole burden themselves. The race question was touched on another side by the recommendation that Congress consider measures to secure to all the people a free exercise of the right of suffrage and every other civil right under the constitution. An extension of federal control over the elections was the method suggested. The closing recommendation of the message was that of such liberal appropriations for the ocean mail service as might encourage the establishment of American steamship lines to Central and South America, China and Japan. — The calm consideration of public business was seriously interrupted at the very opening of the session by a **defalcation in the office of the sergeant-at-arms** of the House. That official, as the medium for the payment of the members' salaries, acts as a sort of private banker for the congressmen, and the flight of his cashier with \$72,000 of the funds in his care, including many unpaid salaries, raised important questions of responsibility for the deficit. A special committee appointed to investigate the whole matter reported, on January 14, a bill making an appropriation to cover all deficiencies in amounts due to members. It was held that, as the sergeant-at-arms was constructively a disbursing officer of the government, the government was responsible for the salary money till actually paid over to the members. This, however, did not cover the question of private deposits, of which it was proved that there were many. After an animated debate, the House rejected the bill. At the

same time, a proposal to send the claims to the courts for decision was also rejected, and the sufferers were left without relief. -The complete list of **House committees** was announced December 21. The chairmen of the most important are: McKinley of Ohio, Ways and Means; Cannon of Illinois, Appropriations; Kelley of Pennsylvania (succeeded at his death by Burrows of Michigan), Manufactures; Dorsey of Nebraska, Banking and Currency; and Hitt of Illinois, Foreign Affairs.—On January 29 an important conflict arose in the House as to **the speaker's power to count a quorum**. The Committee on Rules had not yet reported, and, as the Republican majority was very small, the inevitable absences left it in the power of the Democrats to obstruct legislation by refusing to vote. On the day mentioned, a certain vote, by roll-call, stood 161 yeas and 2 nays, revealing no quorum, though the seats on the Democratic side were well filled. Speaker Reed thereupon, with a short explanatory statement, announced that, having seen many of the silent members before him and having caused record to be made of the fact, he ruled that there was a quorum present within the meaning of the constitution. The minority appealed from the ruling, and insisted very strongly on the principle that the result of the roll-call was the only constitutional evidence of a member's presence. They argued that the will of the member, for which he was responsible only to his constituents, was conclusive as to the member's participation in the business of the House, and maintained that to vest in any one man the arbitrary power to count a quorum would open the way to grave scandal. The unbroken precedent of the House was admitted to be with the minority. The speaker, however, resting upon the necessities of the public business and the inherent absurdity of a member's being simultaneously present and absent, carried through his plan, though not without several days of great disorder. The minority felt it an especial grievance that so radical a change of practice should be made by arbitrary act of the speaker rather than through regular action of the House, as expressed in its rules. That this feeling prevailed among the majority also seems evident from the fact that the long-delayed report of the Committee on Rules was presented early in February. As finally adopted on the 14th, the code presents two new and effective **restraints on filibustering**. The speaker is authorized to have members whom he sees in the House put on the journal as present for the purposes of a quorum, and to refuse to put motions which he deems offered merely for purposes of delay.—Little **legislation** of importance has been completed at the time this RECORD closes. A joint resolution has been passed congratulating the people of Brazil on the adoption of popular government. The Blair Educational Bill, which had been passed by the Senate on two previous occasions, was defeated in that body after a long discussion, by a vote of 32 to 36. The Senate passed an Anti-Trust Bill establishing severe penalties for combinations of citizens or corporations of different states or of the United States and foreign countries, designed to prevent industrial or commercial competition; and the Dependent Pension Bill, giving \$12 per month to indigent veterans unable to earn a support. Both these measures suffered either amendment or substitution in the House and the end has not been reached. The House has passed bills admitting Wyoming and Idaho as states. On the latter measure the Democrats ab-

stained from voting, and forced the speaker to count a quorum, for the purpose, as they said, of testing the constitutionality of the new rule. Important measures that have passed through the committee stage, in addition to those mentioned below under **TARIFF** and **CURRENCY**, are: A bill to amend the Interstate Commerce Act, abolishing "ticket-scalpers" and making many modifications in details of the law; and two Federal Elections Bills, one in the House, placing Congressional elections under control of the federal district judges, and introducing the main features of the Australian ballot system, and another in the Senate, extending the present system of supervisors and marshals under direction of the circuit court judges.

**THE TARIFF.**—An important decision was rendered by the United States Supreme Court on January 6, involving the construction of the tariff law. There had been a long standing doubt as to whether silk ribbons used for hat trimmings should pay 50 per cent duty as silk or 20 per cent as hat trimmings. The government finally settled into the practice of demanding 50 per cent. Importers protested, and the matter finally was decided in their favor as above. The decision rendered necessary the restitution to merchants of some \$6,000,000 collected under the illegal construction. The protests of the silk manufacturers against the duty decided to be the true one resulted in the prompt passage, on January 31, of a bill putting ribbons in the category of other silk goods at the 50 per cent rate. — In accordance with the President's recommendation of revision of the administrative features of the customs laws, what is known as the **McKinley bill** was passed in the House of Representatives on January 25. The measure in general had the approval of all interested parties, except certain of the provisions in reference to undervaluation. The penalties for such offences were made more severe, and the decision of an appraiser, if confirmed by a board of three appraisers, was made final as to the facts in any case of disputed values. An advance of 20 per cent over the invoice value by the appraisers was made conclusive evidence of fraud, for which proceedings might be begun for condemning the goods, and the importer was compelled to assume the burden of proof that no fraud was intended. In any case before a judge no jury was allowed. This was the subject of most vigorous protests by leading importers, and some of the more objectionable features were modified by the Senate committee when considering the bill; e.g. the variation between invoice and appraised value that should entail confiscation was raised from 20 to 40 per cent. — The House Committee on Ways and Means began during the Christmas holidays to prepare for a revision of the **Tariff** schedules. After the usual protracted "hearings" of interested parties, the bill prepared by the majority of the committee was reported to the full committee on March 31, and on April 16 was presented to the House, accompanied by an elaborate report. The Democratic minority also presented a report. The majority declared their purpose to be not only to reduce the revenue, but also to foster and diversify American industry. "We have not been so much concerned about the prices of the articles we consume as we have been to encourage a system of home production that shall give fair remuneration to domestic producers and fair wages to American workmen, and by increased production and home competition insure fair prices to consumers." The opinion was expressed that every

e proposed in the bill would, by cutting off importation, decrease the e. The reduction contemplated by the committee was stated to be \$60,936,936 from customs, and \$10,327,878 from internal revenue. ant features of the bill are as follows: As to internal revenue, abo- of all kinds of licenses, heavy reductions in manufactured tobacco, cigars and cigarettes, and abolition of the tax on alcohol used in the As to import duties: an increase on wool and woollen goods and on e; raw and the lower grades of refined sugar on the free list, with a of 2 cents per pound for fifteen years to domestic producers; and a to producers of silk cocoons and reeled silk. Steel rails are reduced ton. The duties on agricultural products are, in general, increased, — buckwheat, oats, butter and eggs, the last being an addition to the e list. As the bill was first announced, hides, which had been on the t for many years, were taxed, but, after some vacillation under the ani- protests of the leather manufacturers, the committee finally restored o the free list.

**E CURRENCY.** — The conviction that something must be done to act the tendency toward contraction, due to the withdrawal of national irculation, has aroused much new interest in the silver question, as well propositions for prolonging the usefulness of the banks as issuers of

**A National Silver Convention** met at St. Louis, November 26, ing of several hundred delegates, appointed by state governors. The east of Ohio sent only four delegates, however, and those to the south Ohio River, not more than thirty. All that was done by the assembly express very fervid sentiments in favor of free coinage of silver and the gold mono-metallists. — **Secretary Windom's silver coinage** was incorporated, with some additions and modifications, in a bill pre- by the House Committee on Coinage, in March. This provided for ie of treasury notes in return for silver deposited with the Treasury, at determined by the market price of silver at the time of the deposit. foreign bullion or coin could be received, and stringent regulations rovided to insure the enforcement of this provision. This was an n to the original plan, and was intended to exclude the great mass of n Europe, which it was feared would immediately be sent to the United

The notes were redeemable in bullion at the market price at the time entation, or in gold, if the government so chose, or in standard silver , if the person presenting so chose. Deposits of bullion would be re- then the market price was above \$1 for 371½ grains of pure silver. — On ry 25, the **Senate Finance Committee's silver bill** was reported. It ned at increasing the silver element in the currency, but differed from indom bill in many important respects. It required the purchase of ullion to the amount of \$4,500,000 per month, at the market price, all the gold bullion presented. Against this metal, treasury notes o be issued, redeemable on demand in "lawful money of the United " without distinction of metal. The bullion deposited was to be

A joint caucus of Republican senators and representatives, on April eed upon a compromise bill which embraced the leading features of the plan, with a proviso taken from the Windom bill, allowing the secre-



tary of the Treasury, at his discretion, to redeem the notes in silver bullion at the market value on the day of redemption. Another rather important modification of the Senate bill was that the monthly purchase required was 4,500,000 ounces of silver instead of \$4,500,000 worth. — The question of the **national bank note circulation** has been discussed on the old lines by both the treasury officials and Congress. A bill drawn by Mr. John Jay Knox, and submitted to Congress, connects the question of the bank circulation in a measure with the silver question. The plan provides that the banks may circulate notes to an amount up to 75 per cent of their capital. Of these notes 70 per cent shall be secured by United States bonds; provided, however, that if a bank choose, one-half of this security may be furnished by deposit of gold or silver bullion or coin at the current market price. If at any time the market value of either metal or bonds falls below the amount of notes based upon it, the depreciation must be made up by the deposit of more metal. With reference to the future decrease of bonds, provision is made for the gradual accumulation of a "safety-fund" of metal, upon the security of which the notes may continue after all the bonds are paid off. Another bill, introduced by Senator Hiscock, provides for a circulation based upon approved real-estate mortgages, gold and silver bullion, storage warrants and warehouse receipts of pig-iron, cotton, and wheat.

**THE ADMINISTRATION.** — Of the various heads of departments, the report of the secretary of the Treasury excited the greatest interest. After elaborate arguments in behalf of the recommendations incorporated in the President's message in reference to the surplus, tariff reform and subsidies for commerce, Secretary Windom attacked the silver question and set forth, at great length, a new plan for dealing with it. The problem, as he stated it, is to satisfy the popular sentiment which demands a bi-metallic currency, by devising some certain means for keeping in circulation the two metals at a relative face value widely different from the market value of bullion. After showing that all the plans formerly suggested were objectionable in some vital point, he recommended the following measure: "Issue treasury notes against deposits of silver bullion at the market price of silver when deposited, payable, on demand, in such quantities of silver bullion as will equal in value, at the date of presentation, the number of dollars expressed on the face of the notes at the market price of silver, or in gold, at the option of the government, or in silver dollars at the option of the holder. Repeal the compulsory feature of the present coinage act." The secretary's proposition did not meet with a very enthusiastic reception by any of the parties interested in the matter. A strong objection made to it was the opportunity it created for speculation in silver. It was to meet this that discretion was given by the plan to the secretary both as to the amount of silver bullion receivable and the kind of metal to be used in redeeming the notes. But this discretion was the subject of as serious criticism as the danger it was devised to obviate. — In reference to the practice of depositing the surplus in national banks, Mr. Windom denounced the idea in vigorous terms, and declared his purpose to commence a gradual withdrawal of such deposits and to devote the funds to the purchase of bonds. The amount of these deposits, on Nov. 1, 1889, was \$47,495,479. — The most important appointments to office by the President have been:

States Circuit Judge David J. Brewer, of Kansas, to be associate justice of the United States Supreme Court, confirmed December 18; William H. Taft, of Ohio, to be solicitor-general, and Augustus Heard, of Massachusetts, to be minister-resident to Corea, confirmed February 4; Robert Adams, minister to Brazil, January 30; Charles Emory Smith, minister to Russia, February 10; Lewis A. Grant, assistant secretary of War, April 5. — The passage of the **Civil Service Law** in reference to appointments received a warm eulogy from Secretary Windom in his annual report. Both for relief from the distraction incident to the old method and for the quality of the working force secured, he declared the reformed system far preferable to the old, and announced that the extension of the former to the appointment of chiefs of division was under consideration. The friends of the reform agree, in the words of *The Nation*, that President Harrison's "administration of the Civil Service Act has been, on the whole, very faithful." Outside of the act itself, much opportunity for criticism has been found, especially in the Post-office department. About 33,000 changes had been made here by the close of the first year. The removal of Mr. Saltonstall, customs collector at New York, after he had declined an invitation to resign, occasioned considerable comment, as Mr. Saltonstall was a well-known friend of the reform and had conducted the custom-house administration strictly in accordance with its principles. — **An investigation of the Civil Service Commission**, by the Committee on Reform of the Civil Service was instituted February 19, by resolution of the House. Charges were made against the commission, first, for having retained in its service an employé who had given out to a candidate a copy of an examination paper; and, second, for having secured the appointment in the pension department of a clerk who had been discharged from a Western post-office. No report has yet been made, since the committee has entered upon a general investigation of the workings of the law of the commission from the beginning. — Through the instrumentality of the commission, warrants were issued on March 26 against the signers of a circular soliciting money from government clerks for political purposes, in connection with the November election in Virginia. The object is to test the efficacy of the law making such action a criminal offence. The annual bill introduced in the House to strike out the appropriation for the support of the commission was defeated, April 26, by 61 to 120. — **The report of the Interstate Commerce Commission** announced that seventy-three hearings had been either held or scheduled during the past year. Its investigation of free passes showed a great decrease in the number but was not concluded at the date of the report. The competition of foreign railways was discussed, but while it was shown to bear quite heavily on our States roads, the commission seemed to feel that the effects were altogether bad. In addition to certain amendments, the following additional provisions to the law were recommended: The prohibition of commission from one company to passenger ticket agents of another; the abolition of brokerage; the payment of mileage for cars of private companies or for hire; the application of the law to common carriers by water routes. — On February 10, the President signed the proclamation opening the **Sioux reservation** in South Dakota to settlement, and two days later the guards were



withdrawn, and the expectant crowds of settlers rushed in with a repetition of the scenes witnessed at Oklahoma. The report of the commission which negotiated the cession with the Indians was presented to Congress, with the recommendation of an appropriation of some \$1,500,000 necessary to carry out the bargain. The large majority of the Sioux, under the lead of Sitting Bull, declined to take allotments in severalty as allowed by the bill, and went off to their new reservation to be supported in the old way. Complaints were received in March from the Cherokee and Choctaw nations in the Indian Territory that settlers were continually invading their lands from Arkansas. There seems to be considerable activity among the whites who were lately expelled from grazing lands which they had leased from the Indians, but whose rights the government refused to recognize.

**THE FEDERAL JUDICIARY.** — The Supreme Court has made the following important decisions: March 24, the cases of several railroad companies *vs.* The Warehouse Commission of Minnesota (new Granger cases). Held, that the state law authorizing the commission to determine finally what rates for transportation are equal and reasonable is unconstitutional, as denying due process of law in a question of property right. April 7, Home Insurance Co. *vs.* New York State. Held, that the state tax on corporate franchises, proportioned to the dividends declared, is not a tax on the capital stock, and hence no deduction need be made for capital invested in United States bonds. The state law, therefore, is constitutional. April 14, the Nagle *habeas corpus* case. Held, that acting as body guard to a judge on circuit is a duty of a United States marshal, fairly inferable from the constitution and from the general scope of his functions, and that anything done in the performance of that duty, therefore, comes within the clause of the *habeas corpus* act directing the release of persons in custody for an act done “in pursuance of the laws of the United States.” The order of the circuit court is affirmed, by which Nagle, who killed Justice Field’s assailant, Terry, in California, was set free. — The federal circuit court in Virginia, April 7, passed upon a form of beef-inspection law somewhat different from those declared unconstitutional hitherto. The earlier laws forbade the sale in the respective states of beef that had not been inspected “on the hoof” in the state. The Virginia act requires that all beef killed more than one hundred miles from the place where it is offered for sale shall be inspected by county officers, whose fee shall be one cent per pound. It was decided that this provision also was an encroachment upon Congress’ power over interstate commerce, and was therefore unconstitutional. The case was carried to the Supreme Court.

## 2. AFFAIRS IN THE STATES.

November saw four **new states** added formally to the Union by the President’s proclamation: North Dakota and South Dakota on the 2d, Montana on the 8th, and Washington on the 11th. — Of the **elections for state officers** held in November, the most striking results were those in Iowa and Ohio. Each of these reversed the long-established practice by choosing Democratic governors. In Iowa, it was the first defeat for the Republicans in thirty years. In Ohio, Governor Foraker, who was candidate for a third term, and who had

onal reputation, was retired. Ex-Senator Mahone was overwhelmingly elected in Virginia. New York chose Democratic candidates for minor ; there was no gubernatorial election. — The closeness of the result in na's first state election led to disputed returns, a double legislature, and vice of two pairs of United States senators, Republican and Democratic tively. The tenor of the judicial decisions arising out of the matter in ate itself rather favored the Democratic contentions. In the United Senate, however, on the ground of lack of jurisdiction to go behind the canvassing board's certificates, the Republican senators have been seated. elections in Rhode Island in April resulted in a Democratic victory by narrow margin.

**LECTORAL REFORM.** — The movement for ballot reform on the line of -called Australian system has made some progress ; although, on account biennial-session laws of many states, the advance has not been so con- as as in the preceding winter. The legislature of Washington passed on March 19, embodying the Australian system without essential modi- 1. In Iowa, a similar bill passed the lower house, but failed to go through ate. The same was true in Ohio. A bill was introduced in the New legislature which, with the main features of the original system, allowed tribution of ballots outside of the polling places. The official envelope was also introduced later, and then the measure became the subject wrangle between the two houses that has not yet been terminated. and passed a law, March 29, which embodies most of the features of ustralian system, but which does not apply to the whole state. It it yet been signed by the governor. In New York, the Saxton bill, ying all the features most strongly insisted upon by the original friends reform, passed both houses of the legislature, but was vetoed by Gov- Hill, March 31, on the ground, principally, that the exclusively official provided for involved either a total disfranchisement of illiterates or a of secrecy to them, and was therefore unconstitutional. On April 18 promise measure was agreed to, allowing a "paster ballot" to be used, voiding the necessity of official aid to illiterates, and substituting for the et ballot " a series of tickets each containing the names of the candi- of a particular party. This bill was duly passed, almost without oppo- in both houses and was signed by Governor Hill May 1. — On April governor approved a very important measure of electoral reform, the t Practices Act, containing provisions which have proved very effec- t England for obviating bribery and intimidation at elections. The al clause is that requiring every candidate for office to file, within ten fter the election, sworn and verified statements in detail of his elec- penses. Failure to do so entails upon any candidate the penalty of a eanor, and upon the successful one the forfeiture of his office.

**E TRUSTS.** — The last six months has revealed a very marked n against the movement toward combination of corporations on the rinciple. This has been caused both by a series of hostile decisions courts and also by adverse legislation. Combination still goes on, but h the process of regular incorporation rather than mere aggregation trustees. Important judicial action in the matter has been as follows:

In California, on January 6, Judge Wallace, of the superior court, declared the forfeiture of the charter of the American Sugar Refinery Company, on the ground that by joining the trust, it had ceased to exercise the functions for which it had been incorporated. Previously to the decision, however, the trust had turned over the property to Havemeyer & Elder, of New York, and this fact was made the basis of an appeal. In New York, shortly after, the receiver of a refinery which had likewise been put into liquidation for belonging to the trust applied for an injunction against a similar transfer of property by the trust in that state, and also against the payment of any dividends in which the defunct company might have an interest. On February 11, Justice O'Brien, of the supreme court, granted the injunction, deciding practically that pending the appeal of the dissolved corporation to the highest court, the trust could dispose of no property and pay no dividends except under order of the courts. In Nebraska, a similar situation has been brought about in connection with a corporation belonging to the Whiskey Trust. After suit to forfeit the corporation's charter had been begun, the trust undertook to transfer the property, but was restrained by injunction, February 4, till the decision of the suit. In Illinois, a much more far-reaching judgment was rendered by the supreme court on November 26. The Chicago Gas Trust Company, a chartered corporation, had bought up a majority of the stock of all the gas companies of that city, thus establishing a monopoly. The court decided that the power to do this was not granted in the charter authorizing the manufacture and sale of gas. The purpose of a corporation's formation must be a legal one; but the suppression of competition is illegal, on grounds of public policy. Such a decision seems to cut off the resource of which the trusts are tending to avail themselves, *viz.* the securing of charters. During the last six months the American Cotton Oil Trust, the Distillers' and Cattle Feeders' (Whiskey) Trust, and the Sugar Trust have either completed or begun their transformation into chartered organizations. This form has been adopted also by most of the new combinations formed, such as that of the smelters and refiners, the starch manufacturers and others. — Projects of legislation against trusts have been introduced in almost every law-making body in the country, including the United States Congress. The difficulties in the way of effective action, however, have in most cases proved insuperable to the law-makers. In Missouri, a very rigorous law, passed some time ago, was put into execution in November. One section was as follows: "It shall be the duty of the secretary of State, upon satisfactory evidence that any company or association of persons duly incorporated and operating under the laws of this State has entered into any trust, combination, or association as provided in the preceding provisions of this act, to give notice to such corporation that unless they withdraw from and sever all business connection with such trust, combination, or association, their charter will be revoked at the expiration of thirty days from date of such notice." In accordance with this provision, the secretary of State, in November, declared the forfeiture of the charters of all corporations, several thousand in number, which had not returned satisfactory answers to a notice previously sent out by him. The matter was brought before the courts, and in March the circuit court at St. Louis decided the law unconstitutional, not as to the main point,

illegality of trusts, — but because the power to forfeit a charter, a judicial power is vested in the secretary of State, a purely executive authority.

**LABOR INTERESTS.** — There have been no important events during the last six months in the field of controversy between employers and wage-earners. The wave of agitation seems to have crossed the ocean to Europe and have left the United States in general calm. The Knights of Labor held their annual convention at Atlanta, in November; but neither their numbers nor their acts indicated any recovery from the relative insignificance into which the organization has fallen. Rather more powerful now seems to be the American Federation of Labor, which held its fourth annual convention at St. Louis in December. The chief subject of discussion was the agitation for the general adoption of the eight hour working day. A moderate line of action was resolved upon. May 1, 1890, was fixed as the date upon which the demands for eight hours should be made, and it was determined that strikes should be avoided save as a very last resource. Since not all the unions affiliated with the Federation are thoroughly committed to the demand for eight hours, it was determined to begin the agitation in the most favorable trade, perhaps the carpenters', and concentrate all effort at first, gradually extending attention to the rest. An assessment of two cents per member was levied upon the federated union to provide a fund for the support of workmen where strikes should become necessary to enforce the demand. A rather significant paragraph in the report of Samuel Gompers, the president of the Federation, referred to the suggestions that had been made in reference to the combination of the workingmen with certain organizations of farmers. The report declared that investigation had shown the members of these organizations to be mostly employers of labor rather than wage-earners, and stated that combination with farm laborers would be an inappropriate proceeding. As the first of May approached, renewed agitation appeared among the trades unions, and especially in the carpenters' organizations demands were made in various parts of the country which indicated a resolution to make the demonstration on that day an imposing and effective one. The day passed, however, without tumult anywhere, though meetings and processions were held in all the large cities.

**FARMERS' INTERESTS.** — There was held at Montgomery, Alabama, during November 13, a **National Farmers' Congress**, consisting of delegates appointed by the governors of over twenty western and southern states. The subjects of discussion were topics of special interest to the agricultural communities of those regions. R. F. Kolb, of Alabama, was chosen president. The resolutions adopted after several days' discussion asked Congress, among other things, to establish deep-water harbors on the Gulf coast, to facilitate trade with South and Central America; to improve navigation on the Mississippi; and to establish a national board of agriculture. Especial interest was manifested in the tariff question, and resolutions were passed by 160 to stand against that while a substantially prohibitory duty is levied on woollen and other manufactured products, equally effective duties should be levied on mutton-sheep and wool of all kinds, and calling upon farmers to vote at the polls against the injustice done them by the tariff discrimination in favor of the manufacturers. — Rather more than the usual winter activity of

the ordinary farmers' organizations in the West has been evident. **The Michigan State Grange**, in December, passed the following resolutions: "*Resolved*, That we consider it for the best interest of the farmer as well as for the entire debtor class of the United States that the whole product of gold and silver from our mines should be utilized by the government as the basis of a legal-tender money currency, by purchasing the entire output of the mines at its bullion value and issuing thereon legal-tender coin certificates at its coin value, but without coinage of either metal until the necessities of the treasury require it. *Resolved*, That the national banking system, so far as it empowers such banks to issue money, should continue no longer than their charters permit, and that we are opposed to the issuing of paper money by any person, bank or corporation other than the United States, and that all such issuance in the future should be prohibited by law." In March **the Farmers' Alliance**, an organization which has made itself especially influential in Kansas, resolved: "*First*, That we demand legislative enactment apportioning the shrinkage of farm values that are under mortgage obligations, by reason of a contraction of the circulating medium or other unjust legislation, between the mortgagor and the mortgagee in proportion to their respective interests at the time the mortgage was drawn. *Second*, That we demand that Congress appoint a committee to investigate the original bill relating to national bonds, for the purpose of ascertaining whether the word 'for' was erased and the word 'after' substituted, making the bonds payable with the premium of 20 or 25 per cent. *Third*, That we demand the election of United States senators by direct vote of the people. *Fourth*, We demand the election of railroad commissioners by direct vote of the people, and that they be given plenary powers to regulate rates as is now the law in the state of Iowa." The decision of the Supreme Court denying to the Minnesota legislature the power to fix railway freight rates excited violent protests from the farmers' organizations. The executive committee of **the Minnesota Farmers' Alliance**, in resolutions demanding the abolition of the court, expressed their feeling as follows: "We call attention to the fact that the citizens of England, from whom we have largely derived our form of government, would not permit for one instant a bench of judges to nullify an act of Parliament. There the people are properly omnipotent, and no civilized government on earth has ever conferred such powers upon any court as are by our constitution granted to the United States Supreme Court. In our anxiety to protect the rights of property we have created a machine that threatens to destroy the rights of man."

**TEMPERANCE REFORM.** — The legislature of North Dakota passed an act in December carrying out the prohibitory features of the state constitution. The law is very strict, forbidding the sale, barter, or giving away of all intoxicating liquors. For the first offence it imposes penalties of \$200 to \$1000 fine, and imprisonment not less than ninety days nor more than one year. The second and each succeeding offence is treated as a felony, with punishment by imprisonment in the state prison for a period not exceeding two years and not less than one year. There is a proviso permitting registered pharmacists to sell for medicinal, mechanical, scientific and sacramental purposes. All places where intoxicants are sold are declared common nuisances, and the sheriff of the county in which such places are is empowered to abate them and

all intoxicants and fixtures found therein. — Governor Goodell, of New York, felt it necessary to issue a vigorous proclamation, December 28, drawing attention to the constant and flagrant violation of the prohibitory laws of that state, and summoning the administrative and judicial officers throughout the state and all good citizens generally to “one supreme effort to close and suppress every liquor saloon of every description within our borders.” A decision of the Iowa Supreme Court, February 9, sustaining a state law which tends to make prohibition in that state more effective. Difficulty had been found in proving the intoxicating character of beverages sold; and a law was passed enacting that the possession of a revenue tax receipt from the United States should be considered evidence of guilt, on the ground that if less intoxicating beverages were being sold, no necessity for paying the United States tax would exist. It is claimed that dissatisfaction with prohibitive legislation had much to do with the unexpected defeat of the prohibitionists in the November elections. An attempt to introduce a license law into the legislature in April was defeated by a narrow majority. — On March 3, the Supreme Court of the United States passed upon one feature of the Iowa prohibitory law in what was known as the “original package” case.

The suit was due to the seizure by the state authorities of beer imported from Illinois and offered for sale in unbroken cases. The court decided that the liquor was a recognized subject of interstate commerce; therefore its importation could only be prohibited by permission of Congress; that the right to import involved the right to dispose of the article imported so that it should become mingled with the common mass of property within the region; that this blending was effected only when the original package left the hands of the importer; and that only after that could the prohibition of the state have unimpeded control. Inasmuch as no minimum quantity was set to the size of the original package, this decision is considered a blow at all prohibition.

**FISH INVESTMENTS.** — Considerable interest has been excited by the publication of large investments of British capital in the United States in the acquisition of manufacturing establishments. The movement has been in progress for two years, but has not attracted attention till lately. As to the total amount involved have been greatly exaggerated, but \$10,000,000 seems certainly to have been invested through the medium of syndicates. The most valuable properties acquired have been breweries and flour mills. It is the kind of property acquired rather than the amount invested that gives especial interest to the matter; for many times this amount has been concerned in railways alone. The only noticeable result of the movement thus far is the stimulation of a speculative spirit on both sides of the water which so distinguished an authority as the *London Economist* may lead to harm. The enterprises in general have proved very successful, but in April the syndicate that had taken certain Detroit breweries was obliged to relinquish them to their original owners for lack of profits. The sales fell off greatly, owing, it is said, to the patriotic refusal of customers to drink “British beer.”

**RACE PROBLEM.** — The legislature of South Carolina in December repealed the Civil Rights Law, enacted during the era of Reconstruc-



tion. The reason assigned was that it prohibited the railroads to furnish separate coaches for the two races under penalty of forfeiting their charters. A law was then passed providing for such separate accommodations. — In consequence of a difficulty between negroes and whites in Barnwell County, S.C., resulting as usual in the violent death of several blacks, many of the latter race in January emigrated in a body to Arkansas. An incident of this “exodus” common to other movements of the same type was the activity of transportation agents in magnifying the attractiveness of the new region. — **A Colored Men’s Convention** met at Washington, February 3, and spent several days in discussing the interests of the race. A permanent organization was formed, with ex-Senator Pinchback as president, and an address was issued to the people of the United States, saying among other things: “We regret that there exists in certain parts of our country a condition of affairs which renders it necessary for the colored American citizens to meet in a separate body for the consideration of important questions, national in their character. It is because we have been made special objects of attack and oppression that we are compelled to meet in a separate convention, and suggest ways and means to remedy the evils of which we complain.” After a long statement of grievances, the address closes with a petition to Congress, asking that the federal judiciary laws be amended so that it will be possible for the federal courts to organize juries that will be favorable to the enforcement of the laws; that Congress enact into a law some bill similar to the Blair Educational Bill and amend the national interstate law so as to nullify the effects of such state legislation as provides separate cars for white and colored passengers; that a law be passed that will put federal elections under federal control, and also the passage of a law reimbursing the depositors of the late Freedmen’s Savings and Trust Company for the losses sustained by them through the failure of that institution. The proposition in Congress looking to the emigration of colored Americans to any other country, or even to any other part of our own country, through governmental aid, is emphatically condemned.

**THE MORMONS.** — Upon the application of several aliens for naturalization in Utah in November, objection was made against such as were Mormons becoming citizens. After hearing much evidence, especially from apostate Mormons, Judge Anderson decided that an alien who is a member of the Mormon church is not a fit person to be made a citizen of the United States. The evidence, he held, established unquestionably “that the teachings, practices, and purposes of the Mormon church are antagonistic to the government of the United States, utterly subversive of good morals and the well-being of society, and that its members are animated by a feeling of hostility toward the government and its laws.” The applications of Mormons for naturalization were therefore denied. This affair was one of the preliminaries to a local election in Salt Lake City on February 10, in which the “gentile” element obtained control of the municipal government. For the first time the Mormons lost their political ascendancy in their chief centre. The strict enforcement of the anti-polygamy legislation of Congress had much to do with the result. It is believed that this election marks the turn in the tide which has long been prophesied as a certain accompaniment of the influx of Eastern immigrants. The Mormons, or at least the polygamous section of them,

another severe blow in a decision of the United States Supreme Court on February 3, which affirmed the constitutionality of the law for prescribing a test-oath as a qualification for the suffrage. The oath required that the voter is not a bigamist or polygamist, that he does not encourage the practice of polygamy, and that he is not a member of any church which practices or encourages plural marriages. This decision destroys the possibility there was that the large number of Mormons who have settled in Idaho should secure political control of the territory, and the appearance of this danger may hasten its admission as a state.

**DECEMBER.** — November 24, George H. Pendleton, formerly United States senator from Ohio, and recently minister to Germany; December 5, Jefferson Davis, ex-President of the Confederate States; December 23, Henry Clay, the eloquent orator of the "New South"; January 2, George H. Davis, ex-minister to Turkey, and known as a poet; January 9, Elbridge T. Aitchison, ex-senator from New York; January 9, William D. Kelley, first member of the House of Representatives both in years of life and service; January 15, Walker Blaine, solicitor of the State department; January 19, Orlow W. Chapman, United States solicitor-general; February 1, Benjamin Vaughn Abbott, widely known as a writer on law; March 2, John English, ex-governor of Connecticut; March 23, Robert C. Schenck, minister to Great Britain; April 13, Samuel J. Randall, ex-speaker of the House of Representatives.

## II. FOREIGN NATIONS.

**INTERNATIONAL RELATIONS IN EUROPE.** — The Triple Alliance has shown no signs of dissolution. Uncertainty as to the effect of Bismarck's retirement on Germany's foreign policy was removed by the assurance that, so far as the alliance was concerned, it remained the same. There was much comment in the European press in connection with a reported plan of Bismarck to bring about a better feeling between Russia and Austria. This project was said to have been the subject of discussion on the occasion of Kalnoky's visit to Bismarck at Friedrichsruh, and between the German and Austrian Emperors at Innsbruck. It was proposed that Austria should withdraw her moral support of Prince Ferdinand in Bulgaria and leave Russia free hand there, short of actual occupation, while Herzegovina and Bosnia should in like manner be left by Russia to Austria. Italy claimed as the price of her consent the cession of the Trentino to Austria. The facts which confirmed the existence of the arrangement were the refusal by Austria to allow the negotiation of a Bulgarian loan in connection with the cessation of Russian pan-Slavic agitation in Bulgaria and a move for the separation of the Trentino from the Tyrol in respect to local government. During the last week of November, however, the Austrian government granted permission for the quotation of the Bulgarian loan and signified its disapproval of autonomy in the Trentino. These steps destroyed the prospect of success of the new understanding and exposed Austria to charges of bad faith in the Russian, German and Italian press. — **The Bul-**



**garian question** has continued to attract attention throughout the whole period under review. At the end of December Russia called the attention of the powers to the violation of the Treaty of Berlin in the making of a loan by Bulgaria in aid of some of her railways. The Russian note declared, first, that the Bulgarian government was a mere revolutionary body which Russia could not recognize as having any right to deal with the public property; second, that pledging the revenues of roads in East Rumelia was an infringement of the rights of the Porte, as secured by the Berlin Treaty; and third, that engaging any of the state's income endangered the payment of sums due to Russia for the expenses of occupation after the war of 1877-8. This note was generally regarded as a mere public expression of Russia's hostility to Prince Ferdinand, without any intention of more serious opposition. In February an official claim was put in for the arrears of occupation expenses due to Russia, and the claim was promptly satisfied. The reason for the arrears was that Russia had not been willing for four years to recognize the government so far as to make a demand upon it for the debt. During March the question of Prince Ferdinand's recognition was pushed into the foreground by the action of the Bulgarian government itself. A formal demand for recognition was made upon the Porte, who as formally omitted to take any notice of it. Other powers were sounded upon the question, but the general feeling was that any important modification of the *status quo* would precipitate war, either between Russia and some of the great powers or between Bulgaria and the neighboring principalities. Servia has shown herself entirely under Russian influence. M. Patchitch, president of the Servian Skuptschina, spent some time in St. Petersburg in March, and Prince Nicholas of Montenegro announced his purpose of making a similar visit. An animated quarrel between Servia and Bulgaria arose in March, on account of the action of the Bulgarian agent at Belgrade, in reference to certain Macedonian students whom he considered to be Bulgarians, while Servia claimed them as Servians. War was apprehended for a time, but finally, under Austria's influence, the Bulgarian agent was recalled. — **A difficulty between Great Britain and Portugal** developed in December on account of conflicting claims to territory in southern Africa. Portuguese forces under Major Serpa Pinto invaded territory which had long been a subject of diplomatic contention, and took steps which Great Britain regarded as designed to settle the question by forcible occupation. To the British protests, the Portuguese cabinet responded by arguing the old questions and evaded the demand for the withdrawal of her forces; whereupon Lord Salisbury, on January 11, sent an ultimatum in the form of a dispatch to be transmitted by the Portuguese government to the governor of Mozambique, ordering the withdrawal in unambiguous terms, and directed the British legation to leave Lisbon the same afternoon if the ultimatum was not complied with. Upon this, Premier Gomez, reserving the right under the Treaty of Berlin to have the question settled by arbitration, submitted, under threat of war, to the British demand. An appeal to the Berlin signatory powers for a convention on the matter resulted only in an identical reply declining to interfere. — **Great Britain and France** have been involved again in controversy upon the perennial topic of the Newfoundland fisheries. The question was whether the right to catch and can lobsters along the "French

shore" was implied in the old treaty right to catch and dry fish. A *modus vivendi* for the coming season was agreed upon by the two governments in March, providing that the canning factories erected last season shall remain, but that new ones may be established only with the consent of both the British and the French naval commander on the coast. — **The Labor Conference at Berlin.** On February 4 the Emperor William addressed to the Imperial Chancellor a rescript in which, after expressing his sympathy for the hard lot of German workmen and his appreciation of the fact that, on account of the keenness of international competition, improvement could only be hoped for by international co-operation, he directed the Chancellor to ascertain whether the leading foreign powers were inclined to confer on the subjects involved. The responses were favorable, though some modifications in the original scope of the plan were insisted upon by England. On March 15 the conference met, including delegates from Great Britain, France, Italy, Austria, Switzerland, Belgium, Holland, Denmark, Norway and Sweden, and various states of the German Empire. The delegates were without diplomatic character and included many business men and at least one socialist. The body concluded its work on March 29. Its recommendations embraced, in general, restriction and regulation of the kind and hours of work for women and children, careful provisions for the health and security of miners, the prohibition of Sunday labor wherever not absolutely necessary, and such interchange of statistical and administrative information as should enable the governments conferring to work in harmony on all the lines laid down. A noteworthy incident of the conference was the marked attentions offered by the Emperor to Jules Simon, the leader of the French delegation. This fact has been the source of much hopeful speculation as to the future relations of the two nations. It has even been reported, but from Parisian sources, that William favors the retrocession of Alsace-Lorraine. The Emperor's disposition toward general good-feeling manifested itself also in a correspondence with the Pope, in which, while not inviting Leo to send a delegate, William signified his purpose to invite the Bishop of Breslau to participate in the conference, in recognition of the church's interest in the subject. — **The Eight-Hour Demonstration.** At a meeting of socialists in Paris, in July, 1889, it was resolved that an effort should be made for a general and simultaneous demand by the laboring classes all over the world for an eight-hour working day. The trades unions were to be the means for bringing about the demonstration. It was earnestly urged by the leaders that no violence should be used, and moreover, that no general strike should be inaugurated. The day should simply be taken as a holiday, and the special character of the demonstration beyond this should be determined by the circumstances and laws of each particular country. May 1, 1890, was the day appointed. The idea was taken up by the trades unions all through western Europe. As the fixed day approached considerable uneasiness among all the dissatisfied elements of society was noted and the governments showed signs of anxiety lest great disturbances should result. Precautions were taken against revolutionary movements and the precautions were sufficient. Though in almost every large city in western Europe the workmen's programme was more or less completely carried out, the day passed with only a few minor dis-

turbances. In several cities anarchistic presses and orators undertook to incite tumult, but all were promptly suppressed. Barcelona, in Spain, and several manufacturing towns in northern France, were the scenes of perhaps the greatest conflicts, but even these were not very serious. — **The Anti-Slavery Conference**, which began its sessions in Brussels in November, has not yet finished its work. The programme it laid out for itself was very comprehensive, involving the consideration of ways and means for striking at the African slave trade in the interior regions where the slaves are captured, on the coasts where they are embarked and in the lands where they are finally sold. Many difficult diplomatic and legal problems have to be solved by the way.

**GREAT BRITAIN AND IRELAND.** — The general condition of internal affairs in the United Kingdom has been that of peace and quiet. This is especially true in the world of party politics. The usual **party conferences** were held in November and December, the Conservatives at Nottingham and the Liberals at Manchester. At each the question of Irish Home Rule was considered to be the leading issue of the day, but the hopelessness of any definite parliamentary progress in the matter at this time turned the discussions on other topics, chiefly of an administrative or an economical character. The Conservatives endorsed the propositions subsequently embodied in the address from the throne; the Liberals passed resolutions against cumulative voting, and others favoring shorter Parliaments, a direct vote of the people on the liquor traffic and disestablishment of churches in England and Wales. — **The labor troubles** which began with the great dock strikes, settled rather in favor of the workmen on November 4, have continued in various forms ever since. Various sporadic strikes among tailors, bakers, tramway men, *etc.* for more pay and shorter hours were generally successful. A far more serious matter was the strike in December of gas-stokers in London and Manchester, aided by the unions of laborers in the coal trade. The phenomena so familiar on this side of the water all appeared on this occasion, — appeals to public sympathy and support, threats and even violence against “scabs,” denunciations of police interference and threats to overturn the whole social fabric. But as the origin of the strike was not so much dissatisfaction with wages and hours as objection to a scheme of “profit-sharing” which seemed likely to interfere with their union, the laborers failed to secure favor with the public and their demands ultimately failed. In the middle of March a widespread strike of coal miners in the north of England for higher wages caused great trouble in all industries requiring a large coal supply. The men were generally successful. — **Mr. Parnell and the Times.** The suit for libel against the latter was unexpectedly settled without trial on February 3, by the payment of £5,000 damages to Mr. Parnell and a smaller sum to his private secretary, with all costs of the action. The suit was based upon the publication of the Pigott letters. The *Times* said, in reference to the matter: “After our withdrawal of the letters it was clear we had no legal defence; therefore no alternative was open to us but to come to terms or abide the verdict of a jury. As we had at the outset challenged such action we cannot complain at being taken at our word.” **The Parnell Commission**, after sitting 128 days, concluded its sessions on November 22. On February 13

part of the judges was submitted to Parliament. The report is voluminous, embracing copious extracts from the evidence and concluding with findings on the nine specific charges of the *Times*. The conclusions are summarized as follows: *Proved*: That Messrs. Davitt, O'Brien, and five others joined the Land League in order to use it for ; about the independence of Ireland as a separate nation; that all respondents entered a conspiracy to agitate by coercion and intimidation against rents, in order to drive the landlords from the country; that disseminated newspapers tending to incite to sedition and crime; that directly incited to intimidation which resulted in crime, and did not use this intimidation, though knowing its effect; that they defended charged with agrarian crime and supported their families; that made payments of compensation to persons injured in the commission of crime; that they invited and accepted the assistance of the -force party in America, including Patrick Ford and the Clan-na-naid, for the sake of this aid, abstained from condemning that acts. *Not proved*: That after publicly denouncing crimes, they were followers to believe their denunciation was not sincere; that made payments to incite persons to commit crime; that they were closely associated with notorious criminals and made payments to promote the escape of criminals from justice; that any of the respondents at the Clan-na-Gael controlled the League or was collecting money for it. *Disproved*: That the respondents collectively were in a conspiracy for the absolute independence of Ireland; that they were insincere in denouncing the Phoenix Park murders; that they directly incited to crime and intimidation; that none of them expressed *bona fide* disapproval of the outrages and outrage. The specific charges against Mr. Parnell, that he sympathized with the doings of the Invincibles at the time of the Phoenix Park murders and gave financial assistance to one of them to escape to France, are also disproved. As to the special charges against Mr. Davitt, it is proved that he was a convicted Fenian; that he employed for agrarian agitation a man that had been contributed for purposes of outrage and crime, *viz.* "the Kilmishington fund"; and that he was in close association with the -force party in America and was mainly instrumental in uniting that party with the American Parnellites. Both parties to the controversy profess satisfaction with the verdict. The *Times* points to the serious charges proved and the long array of not-proved items which it considers as overwhelmingly decided against the defendants. The Parnellites, on the other hand, declare that while they never denied what is found proved, on the particulars which alone were important, their leader's triumph is absolute. The Government met on February 11. The Queen's speech announced friendly relations with other powers and further improvement in the condition of affairs in Ireland, permitting a restriction of the area of coercion. Propositions were made for land-purchase by Irish occupiers, for local self-government in Ireland and for assisting the people of the poorer districts. For Great Britain, promises were made for facilitating the transfer of land and the redemption of mortgages, for improving the condition of the Scotch crofters, for ascertaining the liability of employers for accident to workingmen and for sanitary

improvement. **The opening debates** turned almost exclusively on Irish affairs. A motion by Sir William Harcourt declaring the *Times* guilty of a breach of privilege in publishing the forged Pigott letters was voted down, though Mr. Smith, the Conservative leader, expressed the government's conviction that the forgery had been proved. Mr. Parnell moved an amendment to the address, on February 14, asking for the repeal of the coercion act. In the discussion of this, it was admitted on all sides that Ireland was in a state of great comparative tranquillity; but the fact was attributed by the Liberals solely to the two successive good harvests, and by the Conservatives solely to the policy of the government. The amendment was rejected on the 18th by 307 to 240. After much nagging by the Parnellites, the government leader in the House, on March 3, moved the adoption of the Parnell Commission's report, with thanks to the judges for the justice and impartiality of their proceedings. Mr. Gladstone proposed an amendment, reprobating the calumnious charges made against members of the House, and while expressing satisfaction at the exposure of evil-doers, regretting the wrong inflicted and the loss endured through those acts of flagrant iniquity. The general objection of Mr. Gladstone to the adoption of the report was that, while it was written in perfect honor and good faith, the judges exhausted all their efforts in pointing out the villanies of certain admittedly bad Irishmen, and omitted entirely the proper condemnation of that by no means lesser villany — the use of forgery to blacken the character of political adversaries — through which alone the commission had been called into existence. Mr. Gladstone's amendment was rejected by 399 to 268. On March 11, after Lord Randolph Churchill had created a sensation by a violent attack on the government for its course in establishing the special court, the report of the commission was adopted. The House of Lords adopted the report on the 21st. — On the 24th, the government's **Irish land purchase bill** was introduced in the Commons by Mr. Balfour. It provides for an advance of sums up to £33,000,000 for the acquisition of land by Irish tenants from landlords who are willing to sell, subject to the control of a reorganized land commission. Repayment to the government is to be by 4 per cent annuities running for 49 years. The securities against loss to the government through default of the purchasers are carefully arranged and include £240,000 yearly contributed by the imperial treasury to local Irish purposes and  $\frac{1}{4}$  per cent charged on the tenants, besides a number of contingent sums; that is, the Irish local taxpayers are ultimately responsible. The landlords are paid in  $2\frac{3}{4}$  per cent government stock. There are provisions in the bill for various expedients to relieve the "congested districts." In the debate on the second reading Mr. Parnell opposed the bill as not a satisfactory solution of the land question. The maximum sum to be advanced he showed was ridiculously inadequate to a complete transfer of Irish land to the tenants. It would simply enable some of the richer landlords to sell out and leave Ireland. He suggested that the act be limited to tenancies not exceeding £50 valuation, and that the advances should be directed not to the purchase of the land, but to enabling the landlords to reduce rents. Other objections, advocated by Mr. Gladstone and his followers, were that the securities involved burdens upon the Irish county taxpayers without any reference to their will, and that neither this nor any other

could be successful till some system of home rule should enable the people to give their consent. The bill passed the second reading May 348 to 268, Mr. Balfour intimating a possibility that some of Mr. Balfour's suggestions might be adopted later.—**The budget** was presented to the House of Commons by Mr. Goschen, April 17. It showed a surplus of £3,221,000, mostly to increased consumption of spirituous liquors. Various small alterations of taxation were proposed, including that of 2*d.* per pound on tea. **Events in Ireland** have not been especially exciting. The new Tenant's League has prospered fairly among the farmers and has afforded opportunity for meeting and agitation in counties where the National League is prohibited. Archbishops Walsh and Croke have come out strongly in support of the new league. The fortnightly meetings of the National League at Dublin have been but thinly attended and the cash receipts have fallen. An extraordinary state of affairs prevails in the town of Tipperary. Nearly the whole of the town is owned by Mr. A. H. Smith-Barry, who has waged a vigorous war of eviction against the plan of campaign on an estate near Youghal. In sympathy with those evicted, practically all his Tipperary tenants, including merchants, shopkeepers and professional classes, refused to pay their rents and left their homes and places of business. These tenants were in general fairly well-to-do, and under the auspices of the national organization they began the creation of a new town in the immediate neighbourhood of the old. There have been no serious disturbances here and the houses of New Tipperary are now about ready for occupation. The market opened with great ceremony on April 12. Mr. Smith-Barry is also waging out an energetic system of eviction at the town of Cashel, whose tenants assume the attitude of the Tipperary men.—**The new lord-lieutenant** the Earl of Zetland, took up his residence in Dublin, December 15.—**The** Poor Law Board of Guardians was dissolved by the Local Government Board in January, on account of its irrepressible inclination to devote its meetings to long discussions involving abuse of the government rather than to the discharge of its duties of its position.—**Died**: January 14, Baron Napier of Magdalen, a distinguished soldier of Indian and Abyssinian wars; February 1, Joseph G. Biggar, Irish member from Cavan, who in 1875 began the policy of free trade in the House of Commons which contributed so much to the development of Parnellism.

**THE BRITISH COLONIES.**—**Canada** has found in her race and religious troubles the chief source of political interest. In the province of Quebec, Mr. Mercier has balanced his great Catholic victory in the Jesuits Estates by a small concession to the Protestants in the matter of higher education. The bitterness between the sects is still intensified by questions of church property. The Dominion Parliament at Ottawa opened its session on January 1. The governor-general's speech took strong ground against the pretensions of the United States in the Behring Sea matter. On February 12 discussion of an affray between Catholics and Protestants in a town near Montreal caused a violent scene in the House of Commons. A few days later a motion to abolish the French language as conjointly official with the English in the Northwest Territories led to an exceedingly bitter debate lasting several days. The government finally patched up and carried a compromise



which, without either affirming or denying the French claims to the use of their language under the federal compact, provided for the maintenance of both languages in the courts and in the laws, while leaving the territorial legislature its own discretion as to its records and proceedings. In Manitoba, at the same time, the rapidly growing English interest showed its strength by the passage of an act by the provincial legislature abolishing the official use of French in the province, and by the introduction under government auspices of a sweeping measure to do away with the Catholic separate schools. New difficulties are threatened in the Northwest Territories by a growing influx of Mormons, fleeing from the severe legislation of the United States. A large colony of them settled in Alberta under solemn pledges to the Dominion government not to practise polygamy. There is no law against this in the Dominion, and under stimulus of reports that the Mormons are violating their pledges, an agitation has developed to induce Parliament to legislate in the matter. — **Tariff legislation** was under discussion in the Dominion Parliament all through April, and the general tendency of the government's policy is toward higher duties on agricultural products. The opposition insists that such a tendency will provoke dangerous retaliation by the United States, against whose products it is mainly directed. Reciprocity in raw materials is advocated by the Liberals, but without much prospect of success. The *modus vivendi* in reference to the rights of American fishermen was renewed for a year by an act passed April 29. — In **Newfoundland** a new ministry assumed control in December. The main issue that brought them in was connected with the quarrel with the French fishermen on the coast. The *modus vivendi* arranged by the British government with France is violently disliked by an influential element of the people, and annexation to the United States is openly discussed. — **A native congress in India** was held at Bombay at the end of December, with some 2000 delegates. Mr. Bradlaugh was present from England. The congress adopted resolutions demanding many administrative reforms and also representative government. The Parsees and Mohammedans stand aloof from the movement. — **Australian Federation** was discussed at a meeting of delegates from the various colonies in February at Melbourne. Resolutions were passed expressing the conviction that union in the near future would be advantageous to all, and providing for future conventions on the subject. The debates showed that tariff rivalries were somewhat of an obstacle to federation. New Zealand is willing to join only for common defence.

**GERMANY.** — **The Emperor's tour** through southern Europe terminated November 15. Among its later incidents were a visit to the Sultan at Constantinople and a conference with the Emperor Francis Joseph at Innsbruck. **The session of the Reichstag** continued till January 25, when the body closed its term. Most interest in its proceedings attached to the **anti-socialist bill** of which the government demanded the renewal as a permanent measure. The most arbitrary powers bestowed by the bill, especially the right to expel dangerous socialists at discretion, met with opposition by the National Liberals, the chief element in the government's majority, and the expulsion clause was defeated 166 to 111. As the government declined to push the measure without this clause, and as the Chancellor brought no personal

to bear in the matter, the bill was finally rejected by Conservative votes. The first in a series of events which have attracted the attention of the world to Germany was wide-spread labor troubles among her miners, beginning in the early part of December. A period of considerable disorder followed, contemporaneous with the strikes in England, Belgium and other parts of Europe. On February 4, the labor problem acquired a new importance through the issue by the Emperor of two rescripts in reference to the workingmen's interests. One, addressed to the Imperial Chancellor, directed the summons of the international conference at Berlin, elsewhere referred to; the other, directed to the Prussian minister of Public Works, Commerce and Industry, after expressing the King's high sense of the importance of governmental concern in the laborers' welfare, declared the necessity of a wider extension of the workingmen's insurance system and of a number of regulations for securing the health, morals and general economic advantage of the working classes. He suggested also the authorization of workingmen's representatives, to express the wants and wishes of their brothers and to treat with employers about common concerns. A council of state was then summoned to consider under the Emperor's presidency for the consideration of all the matters connected with the labor question. These papers created a great sensation in both official and non-official circles. Rumors of a disagreement between Prince Bismarck and the Emperor were based upon the absence of the former's counter-signature from the second document. It was quite generally felt, at all events, that the approaching general elections for the Reichstag and the energetic electioneering of the Socialists had some influence in stimulating this sudden manifestation of imperial socialism. The elections were held February 20, and the result was the complete overthrow of the National Liberals, — upon whom, in alliance with the Conservatives, the government's majority had been based, — and a corresponding gain by the Freisinn and Socialistic groups. The official record of the composition of the Reichstag is as follows: Conservatives, 72; Imperialists, 19; National Liberals, 43; Freisinnige, 67; Centrists, 107; Socialists, 10; Volkspartei, 10; Poles, 16; Guelphs, 11; Reichslanders, 10; anti-Socialists, 5; Dane, 1; no party, 1. The Centre (Ultramontane) alone can command a majority in conjunction with the faithful Conservatives. In the popular election, the most striking feature is the advance of the Socialists from 10.1 per cent in 1887 to 19.08 per cent of the total — a gain in round numbers of 9 per cent of votes. Evidences of negotiations with the Centrist leader, Herr Caprivi, to secure his support for the government were manifest immediately after the result of the elections was known. It seems most likely that the connection with these negotiations arose the circumstances which were the occasion of the retirement of Prince Bismarck. The Chancellor's resignation was accepted by the Emperor on March 20, and General Leo von Caprivi was appointed his successor both as Imperial Chancellor and as president of the Prussian ministry, and, after a short interval, as Prussian minister of Foreign Affairs. No official publication of Bismarck's resignation has been made. The Emperor's very eulogistic letter accepting the resignation made no allusion to them save to declare that they had secured all hope of a change of the Chancellor's resolution. From statements in the *North German Gazette*, hitherto Bismarck's organ, it would



seem probable first, that the Emperor's labor policy was *not* a source of disagreement with the Chancellor; second, that the Emperor's energetic and headstrong disposition and his conviction of a personal responsibility, to be sustained by personal attention to all governmental affairs, had been for some time a source of dissatisfaction to Bismarck; third, that the latter definitely determined to resign because William resolved to revoke the Prussian ordinance of 1852 requiring that all communication between the King and his ministers should be through the president of the ministry, — an ordinance which in practice has made the minister-president alone directly responsible to the King; and fourth, that the immediate occasion of the final rupture was a demand by William for information as to the nature of an interview which Bismarck was learned to have had with Windthorst, the Ultramontane leader in the Reichstag, — a demand which led the Prince to decline to submit his intercourse with the members of the house to any control. The Emperor's letter accepting Bismarck's resignation expressed the deepest gratitude for the Prince's work in behalf of Germany and the Hohenzollerns, and conferred upon him the title of Duke of Lauenburg and the rank of field-marshal general in the army and colonel general of cavalry. On March 29 the ex-Chancellor left Berlin, amid a great demonstration of popular love, and retired to his country seat at Friedrichsruh. Count Herbert Bismarck followed his father into retirement, being succeeded in his place as imperial foreign secretary by Baron Marschall von Bieberstein. — Chancellor von Caprivi made his first official public appearance at the opening of the Prussian Landtag on April 15. In addition to the usual sentiments of patriotic devotion to Prussia, Germany and the Hohenzollerns, his speech contained a high eulogy of his predecessor, and expressed the belief that under the new régime there would be much more room for the working of individual effort in the ministry than was possible, in the nature of things, under the presidency of so powerful a personality as that of Prince Bismarck. The intimation in this statement was understood to be that the responsibility of the various ministers to the King directly, instead of through the president of the ministry, was to be the rule in the future.

**AUSTRIA-HUNGARY.** — Cisleithan interest has been chiefly centred in the **race antagonism in Bohemia**. The energetic anti-German propaganda developed by the Czechs in the Bohemian Diet, culminating in the demand that the Austrian Emperor should be formally crowned King of Bohemia, resulted in the withdrawal of the German delegates from the legislature altogether. In December the matter came up in the Reichsrath through an interpellation as to the government's position on the subject. Count Taaffe announced that no change in the existing constitution of Austria and no coronation at Prague were contemplated by the ministry, but that on the other hand the discussion of constitutional changes in the Bohemian Diet did not seem to involve anything that called for censure. This answer was designed to placate the Germans without offending the Czechs. The result was the continuation of the violent manifestations of race animosity throughout Bohemia and serious threats of a withdrawal of the German members from the Reichsrath. Finally the Emperor by his personal intervention brought about a reconciliation-conference at Vienna between the

and the Czech leaders. The conference sat from the 4th to the 19th. Its conclusions were accepted by all parties, though the "Young" considered themselves betrayed to their German enemies. The treaty involves a host of details in reference to educational, religious, civil and electoral administration in Bohemia, devised with the general object of assuring to the German minority the maintenance of their nation in the midst of the Slavonic majority. Upon the announcement and adoption of the plans proposed, the German members resumed their seats in the Reichstag. It is considered that the concessions thus made to the German minority were all that saved a crisis in the Austrian ministry and the downfall of Taaffe. — In Hungary the chief fact of interest has been the resignation of **Herr von Tisza**, for fourteen years at the head of the ministry. His resignation was the result not of any defeat of the Liberal party, but of long-existing personal rivalries in the cabinet itself. It seems that the proposition to re-naturalize Kossuth, which the latter promptly repudiated, precipitated the crisis. Count von Szapary, formerly minister of Agriculture, succeeded Tisza and the other ministers retained their positions. — Count Julius Andrassy, the Hungarian ex-premier of the empire, died Feb-

**FRANCE.** — The legislature assembled on November 12. In the new session of **Deputies**, after the validation of elections had proceeded far, M. Floquet was elected president by an overwhelming majority. Tirard announced his policy to the chamber on the 19th and received an emphatic vote of confidence as against a Boulangist motion for the revision of the constitution. The indications at this time were quite favorable to the Republican majority in support of the government. The royalists were identically divided as to whether they should cling to the shattered remnants of Boulangism or recognize the republic as hopelessly a fact. Out of indecision of opinion arose weakness in action. — **The position of the Boulangists** was not allowed by the government to be improved over the one which the elections left them. A demonstration organized in Paris for the day on which the chambers met was summarily suppressed by the government. In authenticating elections, the chamber rejected without mercy the Boulangists who had followed the aspiring general. A critical point was reached when the Montmartre election was taken up. Boulanger himself had obtained the majority of votes for this seat, but as he was ineligible, the question was whether a new election should be ordered or the seat should be given to the Republican adversary, M. Joffrin. Not till the 9th of December was the question finally adopted. The decisive reason for this was that Boulanger had renounced his intention to stand again if a new election were ordered, and the government was unwilling to permit a revival of his agitation. The Boulangists made a great outcry at the action of the chamber and their representatives created a scandalous scene when M. Joffrin undertook to speak in the chamber in January. Other manifestations of this sort led to the adoption, on January 25, of a rule authorizing a prolonged suspension of any member not heeding the presiding officer's calls to order. — The Boulangists have recently been brought firmly under control when the government found itself called upon to deal with a royalist demonstration. On February 7 the

**Duke of Orleans**, eldest son of the Count of Paris, was **arrested at the capital**. His offence was the violation of the law forbidding any of the members of his family to enter French territory. It was at first feared that he had sought to bring about a *coup d'état*, but he himself claimed that he only came to fulfil the term of military service due from every Frenchman. His patriotic purpose availed him little; for he was promptly tried, convicted and sent to prison for two years. It is expected that he will soon be pardoned. — Evidences of division among the Republicans began to appear quite clearly in February and the old dissension between the radical and the moderate wings, together with differences of a personal nature with the premier, led to the resignation on March 1 of M. Constans, minister of the Interior. He was succeeded by M. Bourgeois, a more advanced radical; but it was felt that the government was weakened and on March 13 occurred **the fall of the Tirard cabinet**. The occasion was an adverse vote in the Senate on the subject of a commercial treaty with Turkey. The true cause, however, lay deeper and must be sought in those personal and group influences which it was hoped the Boulangist danger had frightened out of the Republican majority. M. de Freycinet undertook the **formation of a new ministry**. The novelty was chiefly in the assignment of the positions; for most of the former ministers remained in the cabinet. M. Constans resumed his old place in the Interior department and M. Bourgeois assumed the portfolio of Public Instruction. Premier de Freycinet announced his policy on the 18th. It included especial attention to the protection of agricultural and laboring interests, particularly in the commercial readjustment required by the expiration of several treaties in 1892.

**RUSSIA**. — Until the last half of the six months under review affairs within the Czar's dominion were apparently calm. In February, however, reports appeared in the foreign press of **commotions among the political exiles in Siberia**. In the spring of 1889 an affray occurred at Yakoutsik in which several exiles were slain by the soldiery and more were executed. The accounts from Nihilist sources represent the cause as lying in the atrocious cruelty of the authorities, which provoked the prisoners to armed resistance. In November, the women political exiles at Kara took umbrage at the conduct of the authorities and resorted to a "hunger-strike," or voluntary starvation. Thwarted in their purpose by violence, one of them assaulted the governor and was in consequence flogged so that she died. Others committed suicide by poison, and some of the male exiles did the same. The circumstances of these affairs have excited much feeling outside of Russia; inside, no public reference to them has been tolerated. Whether or not connected with these events is not clear, but at all events a very general **disturbance among the students** at the universities in European Russia manifested itself in the last week of March. The institutions at Moscow and St. Petersburg were closed by the authorities and many of the students were arrested. Reports are conflicting as to the origin of the troubles, but it is said that revolutionary doctrines were concerned. — It was rumored that an unsuccessful attempt to murder the Czar was made about April 1. — Much ill-feeling has been manifested in the Baltic provinces and Finland on account of very pronounced measures adopted for the thorough Russification of those regions.

**ITALY.**—**The Parliament** was opened by the King in person on November 25. He announced a policy of social, educational and commercial reforms without increase of taxation. In December, in accordance with the King's announcement, the law imposing differential duties on French products was repealed, in order to terminate the commercial war with France. (December 20 a bill passed secularizing the *opere pie*, charitable foundations hitherto under control of the church, and possessing an aggregate income of \$30,000,000 per annum. This act was bitterly opposed by the clericals, who stigmatized it as barefaced robbery. They charged that the \$60,000,000 deficit in the budget was the real motive that led the government to confiscate the charities. The law formed a prominent feature in the complaints contained in the Pope's addresses later. — Prince Amadeus, Duke of Aosta, brother of King Humbert and formerly King of Spain, died January 19.

**SPAIN.**—**A cabinet crisis** extended over practically all the first half of our period. It became acute at the resignation of the ministry on January 3. Premier Sagasta failed in his undertaking to form a new cabinet. A temporary truce was caused by the very serious illness of the infant King during the second week of January, which distracted his regent mother's attention from public affairs. Upon his recovery, an attempt of Senor Martinez to form a conciliation ministry failed and Sagasta finally took the reins again, but with a cabinet consisting wholly of his own faction of the Liberals. The main subjects which were prominently before the Cortes were the budget and a proposition for universal suffrage. The Liberals were not united on either, and the Conservatives were not strong enough to profit by this fact. The budget showed the usual deficit, about \$20,000,000. — Considerable activity and enthusiasm were manifested among the republicans upon the announcement of the Brazilian revolution; and when the death of the King seemed probable, the Carlists made some demonstrations in the north.

**MINOR EUROPEAN STATES.**—In Portugal, the new King, Carlos I, was proclaimed with due ceremony, December 23. The news of the Brazilian revolution created considerable republican agitation throughout Portugal and fears of an insurrection were rife for many weeks. England's action in reference to Portugal's movements in Africa created a wide-spread and violent expression of popular feeling in January against the English. Mobs in several cities attacked the British consulates and a boycott was organized against wares from England. The Gomez ministry resigned and a new cabinet was formed under de Serpa Pimental. A further modification of this body was effected April 2. — **The Porte** issued a firman granting amnesty to the Cretan insurgents, December 5. Many of the leaders were excepted from pardon, but the firman decreed many reforms in the administration of Crete. Moussa Bey, who was charged with barbarities to Christians in Armenia, was privately tried—at least so the Turkish government said—and acquitted. A law was promulgated on December 30 containing elaborate regulations for the prohibition of the slave trade in the Ottoman Empire and its dependencies. — The government of **Servia**, on December 10, expropriated the salt monopoly held by the Anglo-Austrian bank. Some friction with Austria-Hungary was the result. The Belgrade cabinet was reorganized

rch 28, with General Grouitch as prime minister. — **Bulgaria** has been chiefly interested in avoiding the snares of Russian intrigue. On February 2 a plot was detected, headed by an army officer, Major Panitza, for the purpose of seizing and making away with Prince Ferdinand. Evidence is said to have been discovered connecting Russian officials with the affair. Early in March, the Bulgarian government made a general demand upon all the leading powers for the recognition of Prince Ferdinand. This movement was understood to have reference rather to party politics at home than to any hope of success abroad. M. Stambouloff, the prime minister, wished to cultivate patriotic feeling in view of approaching elections. — The Russophil Catargi cabinet in Roumania was succeeded on November 15 by one more to the king's taste, under General Manu. — In **Denmark**, Minister Estrup, hopeless of getting his budget passed, dissolved the Folkthing, January 2, and ordered new elections for the 21st. The results showed very little change in the great opposition majority which has so long annoyed him. After a renewed conflict with the new chamber, the legislature was prorogued April 1, and the collection of the revenue was ordered by royal decree. — **Belgium** experienced during the winter the troubles of prolonged and general strikes among the miners, especially in the region of Charleroi. These were simultaneous with the labor troubles in Germany. The strikers were generally successful in obtaining at least a part of their demands.

**AFRICA.** — The General Assembly of **Egypt** met December 15 to consider financial reforms made possible by the extraordinary fact of a surplus of £150,000 in the budget for 1890. A decree was approved abolishing to a great extent the *corvée* and substituting a land tax. The proposition to convert a five per cent into a four per cent loan failed through the refusal of the French government to give its consent. This consent was promised on conditions looking to an early or at least a definite date for the withdrawal of the British troops — conditions which Great Britain rejected. — The rivalry among the European powers for territory in all parts of Africa has continued with some few striking incidents. **Stanley** and Emin Pasha reached the coast at Zanzibar, December 4. The complete story of their proceedings reveals the probability that, for a generation at least, the equatorial provinces of Africa, if not the whole Soudan, are lost to civilization. The Mahdists have established an exceedingly powerful empire there. On the eastern coast, about Zanzibar, **German interests** have prospered well under the direction of Major Wissmann. The chief Bushiri, who was the principal obstacle to German progress inland, was captured and put to death December 15. Mwanga, the King of Uganda, on the shores of Victoria Nyanza, has won back his power, and has overthrown the Arab and anti-Christian party which drove him from the region. This revives the possibility of a railroad from the coast to the lake. Emin Pasha entered the German service in East Africa early in April, and immediately prepared to lead a large expedition inland to the great lakes. The English were exceedingly angry at what they deemed his ingratitude; for the rivalry between German and British interests in this region is very keen, and the English East African Company had been trying to secure him. — A sharp collision between **English and Portuguese** claims to territory in the Zambesi region occurred in November. The

guese Major Serpa Pinto, undertaking to assert his authority along the course of the Zambesi, came in conflict with natives claimed to be under a protection. Though he easily conquered them, the intervention of the government forced him to withdraw. [For the diplomatic negotiations, **International Relations.**] The region at stake is the great interior country between the Portuguese coast settlements about Mozambique on the east, and those about St. Paul de Loando on the Atlantic Ocean. A British South Africa Company was chartered in December to exploit this region. It is continuous with the territory under British influence north of the Orange River, and extends to the shores of Lake Nyassa. — **The Italians in Abyssinia** have made enormous progress. Early in November a protectorate was declared over a considerable length of coast, and about the same time a treaty was made with Menelik, guaranteeing Italy's support against Ras Alula, his rival for the throne and an old enemy of the Italians. A month later Ras Alula was totally defeated, and Menelik, as recognized King, accepted the protectorate of King Humbert's government over all Ethiopia. This puts Italy in a very prominent position among the powers in Africa and opens up possibilities of successful attack from the east on the Mahdists at any time. A tendency among the English to resent the great progress of Italy in this region was met by a declaration of Premier Crispien, March 6, that the two governments were in cordial agreement about African affairs. — **The French in Dahomey** were attacked by the native King in the first week in January. The King refused to recognize the French protectorate over the territory.

Desultory hostilities have been in progress ever since, the French government not wishing to make any positive conquest of the territory.

**SOUTH AMERICA.** — By far the most important political event on the continent during the last six months has been **the revolution in Brazil.**

There had long been a strong republican sentiment in the empire, but it was generally believed that the existing constitution would last as long as Dom Pedro II lived. The establishment of the republic was a complete surprise, and seems to have taken place rather as the development of a military mutiny than as the result of a deliberately planned *coup d'état*. On the morning of November 15 the imperial ministry undertook to carry out a plan of transferring certain disaffected regiments of the regular army from Rio Janeiro to distant parts of the empire. The troops refused to obey orders and were put down in their mutiny by General Deodoro da Fonseca. The other regular troops in the capital joined with the insurgents, as did also the *quasi*-military forces of police and firemen. In a short time the ministers found themselves overthrown and sent in their resignations to the Emperor. Dom Pedro, having been summoned in haste from his suburban palace at Petropolis, undertook to form a new ministry, but without success. Meanwhile the insurgents made Dom Pedro a prisoner in his city palace and cut off all intercourse with the outer world. The leaders of the rebels then, in conjunction with the chief republicans of the capital, organized a ministry of their own and proclaimed the republic. On the 16th Dom Pedro was notified that the presence of himself and his family in the country was incompatible with the new order, and at three o'clock in the morning of the 17th the whole imperial family was put on board a steamer for Portugal, which immediately left the port under escort of a man-



of-war. No blood was shed in the affair except in the case of Baron Ladario, the minister of Marine, who was severely wounded in attempting to quell the mutiny. The provisional government was organized as follows: Fonseca, President; Loba, Interior; Bocayuva, Foreign Affairs; Barboza, Finance; Campos Salles, Justice; Constant, War; Vanderholtz, Marine; and Ribero, Agriculture. A decree was issued by this body proclaiming the republic under the name of the United States of Brazil, the former provinces to form the states and to be united by federation. Governors duly appointed for the states were directed to preserve order and to administer local affairs, pending the action of a constituent assembly which should provide finally for the new government. With only a slight disturbance in a single city, the provinces gave in their adhesion to the new régime. Foreign governments were assured that the engagements of the imperial government would be faithfully maintained, and by the end of November the most perfect outward tranquillity prevailed in both the internal and external affairs of the transformed nation. For the elections under the republican system the provisional government, on November 21, decreed that the suffrage should be extended to all citizens able to read and write. Dom Pedro reached Lisbon with his family December 7, and was warmly received by the Portuguese court. He declared his willingness to return to Brazil if summoned, but renounced all intention to favor movements for restoration by force. The cash donation which the republicans offered him he declared he would not accept.—On December 21, a decree was issued by the provisional government fixing the date of the elections for the constituent assembly for September 15, and the meeting of that body for November 15, 1890. The same decree revoked the cash grants to Dom Pedro and also his civil list, and forbade the return of any of his family for two years. In January the separation of the church from the state was decreed. Both federal and state authorities were prohibited to do any acts establishing any religion, and the patronage, resources and prerogatives of all religious institutions were extinguished.—The ex-Empress of Brazil died suddenly at Oporto, December 28th.—Peru concluded in January a settlement with her English bondholders on terms which, if fairly carried out, promise much for the future prosperity of the country. To cancel the bonds, the government turned over to the holders, represented by a New York firm of contractors, all the railways of the state for a term of sixty-six years, and the product of its guano beds up to 3,000,000 tons. Extensive privileges are conceded to favor the development and improvement of the railroads and to facilitate the exploitation of the guano deposits. The government pays in addition £80,000 annually for thirty-three years.—The Argentine Republic has been suffering from a trying financial crisis. Depreciated paper currency and wild-cat banking are reported to be the causes of the difficulty. The long-standing *Missiones* boundary difficulty with Brazil and Uruguay was definitely terminated by treaty in January.—The Panama Canal has been made the subject of a thorough examination by a committee of French engineers, whose conclusions will definitely determine, in all probability, the question of its completion.

**MEXICO AND CENTRAL AMERICA.**—As regards its general social and industrial development, Mexico seems to have entered upon a definite career of progress. A congress of delegates from the different states

at the capital in December on invitation from the President, and spent a few days in discussing projects for the improvement of the educational facilities of the nation. Very great activity has been manifested in chartering banks and railways. Foreign capitalists have competed hotly for promising concessions. A contract was signed in November by the government providing a subsidy of \$50 per head for every able-bodied negro colonist from the United States settled permanently on public land in certain designated Mexican states. Congress met April 1. The message of President Diaz reported a good state of the finances and general internal prosperity.—The plan of Central American Union, formulated by a convention of delegates from the five states at San Salvador in October, was approved in the course of the next few months by Guatemala, Honduras and San Salvador. Costa Rica is confidently expected to give her assent through her congress in June. The plan provides for the preliminary steps toward a permanent federal union, by instituting a common executive for the administration of all the foreign affairs of the five states. The executive consists of a chief, chosen annually by each of the republics in turn, and a council of five, one member from each state. The sovereignty of each republic in domestic affairs is retained, but each is so to modify its laws in reference to commerce and other common interests as to favor ultimate union. It is provided that the plan shall go into effect between those ratifying it on the 15th of September, 1890, and by 1900, if not before, a constituent assembly shall be summoned to complete the central organization by the addition of a legislature and a judiciary. Nicaragua is inclined to oppose the project on account of the fact that she may have to share with the rest some of the special advantages expected to gain from the canal.—The Nicaragua Canal is reported to be making good progress, though the work as yet is in the preliminary stages.

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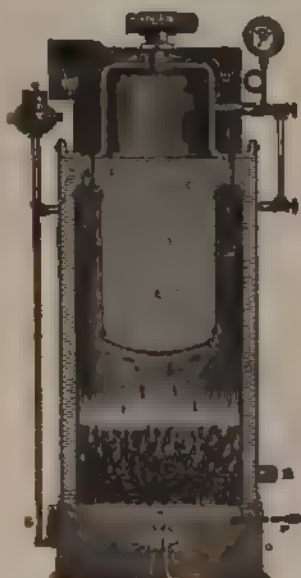
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THE UNIVERSITY FACULTY OF POLITICAL SCIENCE  
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SEPTEMBER 1890

[Number 3]

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## RECENT CENTRALIZING TENDENCIES IN THE SUPREME COURT.

**I**N the very valuable address of Justice Miller at Philadelphia during the constitutional celebration occurs this sentence: "While the pendulum of public opinion has swung with much force away from the extreme point of states-rights doctrine, there may be danger of its reaching an extreme point on the other side." This idea may have been suggested by a perusal of some recent opinions rendered by the Supreme Court of the United States. Five opinions, rendered during the last four terms of the court, give some indication of the motion of the pendulum so far as determined by the influence of that body.

### I.

Questions relating to commerce between the states are now coming with frequency before the tribunal of last resort, and naturally the movement of the pendulum is most apparent here. The right of a state to tax interstate commerce indirectly by taxing an undivided mass of commerce, state and interstate, was for some years settled by two decisions rendered in 1872. In what is commonly called the State Freight Tax Case,<sup>1</sup> the court held that Pennsylvania had no right to levy a tax of a certain amount per ton on merchandise hauled from a point within the state to a point without, or from a point outside to a point within; this was interstate commerce, the tax was a regu-

<sup>1</sup> 15 Wallace, 232.

thereof, and Congress had the exclusive right of such regulation. But in the *Railway Gross Receipts Case*,<sup>1</sup> the court held Pennsylvania might levy a tax on the earnings of a railroad, though a part was derived from interstate commerce; they had lost its connection with the merchandise and had become, with other moneys, the property of the company within the state. In a dissenting opinion, in which Justices Field and Harlan concurred, Justice Miller declared the doctrine which has since been made the doctrine of the court. He laid down the following proposition:

By no device or evasion, by no form of statutory words, can a state compel citizens of other states to pay to it a tax, contribution or fee for the privilege of having their goods transported through that state by the ordinary channels of commerce.

At a later process of time the Philadelphia and Southern Mail Steamship Company resisted the collection of a tax on its gross receipts, and the issue thus raised was determined by the Supreme Court in May, 1887.<sup>2</sup> There was no dissenting opinion filed, but this does not indicate unanimity on the point so much as that the justices who were disposed to dissent from the position taken by the majority felt that they had sufficiently defined their views in dissenting opinions filed earlier in the same term. Justice Bradley, in reading the opinion of the court, referred to the action of the court in 1872, and combated its reasoning. The foundation of the decision in the *Gross Receipts Case*, he stated, was that the tax was laid upon a property which had become incorporated into the general mass of the company's property. Just as imported goods, after their original packages have been broken, are taxable, so the products of interstate transportation, when they lose their specific identity, are under the authority of the states. This analogy, however, seemed to the learned justice unsound. For, he said, when the imported goods

are mingled with the general mass of property in the state, they are not singled out and singled out for taxation as imported goods, and by

<sup>1</sup> 15 Wallace, 284.

<sup>2</sup> 122 U. S. 326.



reason of their being imported. If they were, the tax would be as unconstitutional as if imposed upon them whilst in the original packages. When mingled with the general mass of property in the state, they are taxed in the same manner as other property possessed by its citizens, without discrimination or partiality. We held in *Welton vs. Missouri*, 91 U. S. 275, that goods brought into a state for sale, though they thereby become a part of the mass of its property, cannot be taxed by reason of their being introduced into the state, or because they are the products of another state. To tax them as such was expressly held to be unconstitutional. The tax in the present case is laid upon the gross receipts for transportation as such. Those receipts are followed and caused to be accounted for by the company, dollar for dollar. It is those specific receipts, or the amount thereof (which is the same thing), for which the company is called upon to pay the tax.

There is a great difference, he continued, between taxing a man on his property without reference to the source from which it is derived, and laying a special tax upon his receipts in a particular employment.

If such a tax [as the latter] is laid and the receipts taxed are those derived from transporting goods and passengers in the way of interstate or foreign commerce, no matter when the tax is exacted, whether at the time of realizing the receipts, or at the end of every six months or a year, it is an exaction aimed at the commerce itself, and is a burden upon it, and seriously affects it.

The analogy with the taxation of imported goods was therefore declared to be fallacious, and the principle of the *Railway Gross Receipts Case* to be untenable.

According to this new decision, then, a state may not tax any receipts of a railway company derived from foreign or interstate commerce, even though those receipts be mingled with moneys earned from commerce wholly within the state. The people of Illinois will be interested in noting this opinion, and they will be still more interested in ascertaining whether it is to be deemed retroactive. It is an old story about the lawyer, who, being interrupted by the court with the curt remark, "That is not the law," neatly replied: "It was the law, your honor, until you decided otherwise." The state debt of Illinois has been paid off and the state government for years has been supported

tax on the gross receipts of the Illinois Central railroad, much of whose traffic is of an interstate character. If the result of the Railway Gross Receipts Case was the law until the court decided otherwise, no greater evil has come upon the state of Illinois than the necessity of finding some new source of revenue. But if the doctrine of the case of *Steamship Company vs. Pennsylvania* is to be held as having been the law for many years, then the state of Illinois owes the Illinois Central railroad all the millions that have been collected from it.

## II.

Until lately the states have been allowed to regulate their internal commerce, even though commerce with other states has been thereby indirectly affected. Of course it was never decided that states could operate directly upon interstate commerce as such; but it was the doctrine of the Supreme Court that so long as Congress did not legislate upon the subject, states might take action in regard to such interstate commerce as was mingled almost inextricably with the commerce of the state. The opinion of the court in the *Wabash Railroad Case*, October, 1886, together with the vigorous and exhaustive dissent against it signed by three members of the court, makes the matter very clear. It is not necessary for a layman to go back to construe the earlier opinions of the court, because this was done in the *Wabash* case by the majority of the court with great diplomacy, and by the minority with great frankness. The so-called Granger Cases were decided at the October Term of 1876. In the case of *Munn vs. Illinois*,<sup>1</sup> the question was the right of the state to regulate mixed state and interstate commerce by fixing maximum charges for the use of grain elevators located within the state of Illinois. *Peik vs. Eastern and Northwestern Railway Company*<sup>2</sup> turned on the question of Wisconsin's right to make certain regulations as to the classification of freight. Inasmuch as the required classifications differed from those of Illinois, and the railroad in ques-

<sup>1</sup> 118 U. S. 557.

<sup>2</sup> 4 Otto, 113.

<sup>3</sup> 4 Otto, 164.

tion was engaged mainly in transportation between the two states, the regulations in question directly affected and obstructed interstate commerce. The Supreme Court said in the Munn case :

The warehouses of these plaintiffs in error are situated, and their business carried on, exclusively within the limits of the state of Illinois. They are used as instruments by those engaged in state as well as those engaged in interstate commerce, but they are no more necessarily a part of commerce itself than the dray or the cart by which, but for them, grain would be transferred from one railroad station to another. Incidentally they may become connected with interstate commerce, but not necessarily so. Their regulation is a thing of domestic concern, and certainly until Congress acts in reference to their interstate relations, the state may exercise all the powers of government over them, even though in so doing it may indirectly operate upon commerce outside its immediate jurisdiction.

In the Peik case, the opinion rested on the same grounds :

Until Congress acts in reference to the relations of this company to interstate commerce, it is certainly within the power of Wisconsin to regulate its fares, *etc.*, so far as they are of domestic concern. With the people of Wisconsin this company has domestic relations. Incidentally these may reach beyond the state. But certainly until Congress undertakes to legislate for those who are without the state, Wisconsin may provide for those within, even though it may indirectly affect those without.

In the Wabash case, the question was as to the right of the state of Illinois to regulate the charges for hauling in the state of Illinois freight originating in that state, but destined for New York. The court, through five of its nine members, denied the right of the state. The opinion was read by Justice Miller. He quoted from the Munn and Peik cases the passages cited above, and admitted in a general way that the court treated those cases as involving that class of regulations of commerce which, like bridging navigable rivers, pilotage and many others, could be acted upon by the states in the absence of any legislation by Congress on the same subject. Having himself concurred in those earlier decisions, he was prepared to take his share of the responsibility for the language

He believed it clear, however, from the reports, that the question involved in the present case did not receive any very adequate consideration, either in the opinions of the court or in the arguments of counsel. The opinion then goes on to argue that the commerce in question was interstate commerce, and therefore be regulated only by act of Congress; and if Congress omitted to regulate it, this was to be taken as a declaration by Congress that it should not be regulated. Even if the freight was within the state of Illinois it was beyond the jurisdiction of the state, for the general reason that if one state could legislate regarding it, every other state that the freight passed through might do the same, and interstate commerce might be made impossible.

Chief Justice Waite, who, having written the opinions of the court in the *Munn* and *Peik* cases, ought to have been particularly well qualified to construe them, joined Justice Bradley and Justice Gray in a dissenting opinion in the *Wabash* case. Justice Bradley, who read the dissenting opinion, did not think that the point in the *Wabash* case had been so slightly distinguished in the *Munn* and *Peik* cases as the majority of the court suggested, and he made a quotation from the *Peik* opinion which had not been referred to by Justice Miller.

These suits [said that opinion] present the single question of the right of the legislature of Wisconsin to provide by law for a maximum charge by the Chicago and Northwestern Railway Company for fare paid upon the transportation of persons and property carried within the state, or taken up outside the state and brought within it, or taken up inside and carried without.

With such a statement of the question, the dissentient justices could not see how this case could be distinguished from the one under consideration. The fact that in *Peik's* case there was a classification of freights and a limitation of charges, and in the present case a prohibition of discrimination in the rates, they considered a distinction without a difference.

The question [the dissenting opinion said] rests solely and entirely upon the power of the state, when unrestrained by any contract or by

any action of the legislative department of the United States. Does it follow then that because Congress has the power to regulate this matter (though it has not exercised that power), therefore the state is divested of all power of regulation? That is the question before us. We had supposed that this question was concluded by the previous decisions of this court: that all local arrangements and regulations respecting highways, turnpikes, railroads, bridges, canals, ferries, dams and wharves, within the state, their construction and repair and the charges to be made for their use, though materially affecting commerce, both internal and external, and thereby incidentally operating to a certain extent as regulations of interstate commerce, were within the power and jurisdiction of the several states. That is still our opinion. It is almost a work of supererogation to refer to the cases. They are legion.

Reference was made to Justice Field's opinion in the *Escanaba* case, 107 U. S. 687, which held that the power to control the bridges over the Chicago river, — their construction, form and strength, the size of their draws and the manner and times of using them, could nowhere be better vested than with the state or the authorities of the city upon whom it had devolved that duty; that if this power should be so exercised as unnecessarily to obstruct the navigation of the river, Congress might interfere and remove the obstruction; but that until Congress acted, the power of the state over bridges across its navigable streams was plenary. Justice Bradley then continued:

It is matter of common knowledge that from the beginning of the government the states have exercised almost exclusive control over roads, bridges, ferries, wharves and harbors. No one has doubted their right to do so. . . . There is a class of subjects, it is true, pertaining to interstate and foreign commerce, which require general and uniform rules for the whole country so as to obviate unjust discriminations against any part, and in respect of which, local regulations made by the states would be repugnant to the power vested in Congress, and therefore unconstitutional; but there are other subjects of local character and interest which not only admit of, but are generally best regulated by, state authority. The distinction is pointed out and enforced in the case of *Cooley* against the Port Wardens of Philadelphia, 12 Howard, 299. In that case it was held that the pilotage regulations of the different ports of the country belong to the latter class and are susceptible of state regulation. This case has been approved in several subsequent decisions.

ffering in the circumstances, but not unlike in the issues  
ved, are the ferry cases. The Gloucester Ferry Company  
engaged in the business of carrying passengers and mer-  
dise across the Delaware, by means more safe and com-  
ous than those in existence at the time General Washing-  
made his historic passage. The company's property was  
cated at Gloucester, N. J., except during the few minutes  
a boat was discharging at the wharf in Philadelphia. It  
attempted, however, to tax the company in Philadelphia on  
ground that it did business there. In April, 1885, the  
eme Court denied this right,<sup>1</sup> arguing that as the company  
no property in Philadelphia, there was nothing to tax there  
ts commerce, pure and simple, and that this, being wholly  
state, could be touched only by Congress. A similar  
on had been rendered some fifteen years before, in the case  
t. *Louis vs. Ferry Company*.<sup>2</sup> Here the ferry company  
ated between Missouri and Illinois at the city of St. Louis.  
roperty was all in Illinois, though in St. Louis the company  
a license to the city and a wharfage tax. The insatiable  
icity then sought to tax the company on the value of  
oats. The right might have been denied by the Supreme  
t, perhaps, simply on the ground that the property was not  
in the jurisdiction of the municipality; but the court con-  
ed this case, like that of the Gloucester company, in con-  
on with the broader question of interstate commerce.

will be noticed that this ferry company was engaged in  
state commerce and nothing else. The court did not pass  
ie right of St. Louis to levy a license tax on the company  
to charge it wharfage, because these questions were not  
d. Both are taxes upon interstate commerce. Though  
wharfage might be regarded as rental for a certain piece of  
erty, the license tax admits of no such theory. But even  
gh wharfage be deemed rental, the difficulties regarding it  
ot removed. If the wharf be private property, any charge  
therefor by the state or municipality is not rent, but a tax  
d upon the commerce done at that wharf. If the wharf be

<sup>1</sup> 114 U. S. 196.

<sup>2</sup> 11 Wallace, 423.

public property, the tax may be called rent, but it may also be placed so high as seriously to obstruct the commerce that seeks terminal facilities. The Supreme Court cannot stop with the decision in the Wabash Railroad Case. St. Louis's wharfage and license fees must not be tolerated; the cities of Rock Island and Davenport, or either of them, must not be permitted to regulate a street car company that runs cars from the state of Illinois to the state of Iowa; Chicago must not be permitted to obstruct lake commerce by closing its drawbridges, and New York city must be restrained from regulating foreign commerce through control of wharfage and pilotage. What time is likely to elapse before the consummation of these reforms, may be estimated from the fact that fifteen years intervened between the Railway Gross Receipts Case and that of the Philadelphia Steamship Company against Pennsylvania, only ten years between the Granger Cases and the case of the Wabash railroad, and that eight years after the court held that the state of Tennessee *could* tax a drummer from Connecticut, it held that the same state could *not* tax a drummer from Ohio.

### III.

It is because he is an agent of interstate commerce that the federal judiciary extends its ægis over the commercial traveller, — the "drummer," who gives the step to the armies of commerce. The Supreme Court has descanted on his utility, and has painted in dark colors the condition of the manufacturers and wholesale merchants of the country without him. For a good many years the law was that a license tax on drummers and peddlers was valid if it made no discrimination between those of the taxing state and those coming from other states. The state of Tennessee levied a license tax on commercial travellers, without any such discrimination. A Connecticut sewing-machine company had an agent in Nashville, and on one occasion he went into Sumner county to solicit orders for the machines. Having taken out no license, he was duly arrested and fined for violation of law, and his case reached the Supreme Court.

opinion of the court<sup>1</sup> was read by Justice Swayne, who

law which requires a license to be taken out by peddlers who sell goods not produced in the state, and requires no such license with respect to those who sell in the same way articles which are produced in the state, is in conflict with the power of Congress to regulate commerce between foreign nations and among the several states. . . . In all cases of this class to which the one before us belongs, it is a test question whether there is any discrimination in favor of the state or of the citizens of the state which enacted the law. Wherever there is, such discrimination is fatal. Other considerations may lead to the same result. In the case before us, the statute in question, as construed by the supreme court of the state, makes no such discrimination. It applies to sewing machines manufactured in the state and out of it. The burden is not an unusual or unreasonable one. The state, putting all machines upon the same footing with respect to the tax commanded of, had an unquestionable right to impose the burden.

The state went on collecting this license tax, and in course of time the arrest of the drummer for a Cincinnati paper house gave rise to the case of Robbins against Shelby County Taxing District,<sup>2</sup> an *alias* of the city of Memphis. In the course of many years the opinion of the court had undergone such a change that the idea that "it is a test question whether there is discrimination" was treated with surprise and impatience, and with contempt. Justice Bradley, who read the opinion of the court, said :

It was strongly urged as if it were a material point in the case, that no distinction is made between domestic and foreign drummers, those of Tennessee and those of other states ; that all are taxed alike. But this does not meet the difficulty. Interstate commerce cannot be taxed even though the same amount of tax should be laid on domestic commerce, or that which is carried on solely within the state. This was decided in the case of the State Freight Tax, 15 Wallace, 232. The taxation of sales of goods which are in another state, for the purpose of introducing them into the state in which the negotiation is made, is interstate commerce.

<sup>1</sup> Machine Company vs. Gage, 100 U. S. 676.

<sup>2</sup> 120 U. S. 489.



The learned justice proceeds in the following ingenious manner to show that the tax in this case was a discrimination against the merchants of states other than Tennessee :

They can only sell their goods in Memphis by the employment of drummers and by means of samples ; whilst the merchants and manufacturers of Memphis, having regular licensed houses of business there, have no occasion for such agents, and if they had, they are not subject to any tax therefor. They are taxed for their licensed houses, it is true ; but so, it is presumable, are the merchants and manufacturers of other states in the places where they reside, and the tax on drummers operates greatly to their disadvantage in comparison with the merchants and manufacturers of Memphis.

The opinion of the court concludes with this touch of humor :

To say that the tax, if invalid as against drummers from other states, operates as a discrimination against the drummers of Tennessee, against whom it is conceded to be valid, is no argument ; because the state is not bound to tax its own drummers ; and if it does so whilst having no power to tax those of other states, it acts of its own free will and is itself the author of such discrimination.

Chief Justice Waite, with whom Justices Field and Gray concurred, read a dissenting opinion. In it he said :

I am unable to see any difference in principle between a tax on a seller by sample and a tax on a peddler, and yet I can hardly believe it would be contended that the provision of the same statute now in question which fixes a license fee for all peddlers in the district, would be held to be unconstitutional in its application to peddlers who came with their goods from another state and expected to go back again. . . . If citizens of other states cannot be taxed in the same way for the same business, there will be discrimination against the inhabitants of Tennessee and in favor of those of other states. . . . The constitution gives the citizens of each state all the privileges and immunities of citizens in the several states, but this certainly does not guarantee to those who are doing business in states other than their own immunities from taxation on that business to which citizens of the state where the business is carried on are subjected.

The commissioners of the District of Columbia have lately forbidden the distribution of advertising circulars from house to

The relations of the district to Congress make this a what peculiar case, but suppose that the city government Philadelphia adopted a similar regulation ; it would take very changes in the opinion read by Justice Bradley in the case considered to show that the enforcement of such an order at the advertisements of a New York merchant was an constitutional interference with interstate commerce. The e handbill is as useful in its way as the magnificent drum-and the case supposed is not one of regulation but of absolute prohibition. The reader of Justice Bradley's opinion in the ns case can easily imagine him describing the disadvantage the New York merchant would labor under if he were l the right to leave the announcement of his wares under door in Philadelphia. The Philadelphia merchant can t attention to his goods by the displays in his store window but the New York merchant is ninety miles away ; shall down supinely and with folded hands wait for the casual elphian to pass his store ? Shall he trust to the mails, attempt the interminable task of enlightening all Philadelphians to his wares by personal correspondence ? This would "silly and tedious" as the judge says trying to sell goods at a drummer would be. It is perfectly plain that the handbill ordinance, when applied to a merchant in another is a regulation of interstate commerce. It puts the remote herefore unseen and unheard-of dealer at a disadvantage he local dealer, who can without expense stand in his own way and haul passers-by from the sidewalk into his place of ess and compel them to look at his bargains. The ordinance was undoubtedly enacted to create this precise disadvantage and to operate as a protection to the local dealers. If ation by sample be interstate commerce when the goods ed are without the state, solicitation by advertisement is interstate commerce under like circumstances ; and if a trifling tion or a low tax on interstate commerce be unconstitutional and "interstate commerce cannot be taxed at all," then shall we say of an absolute prohibition of one of its hes ?

## IV.

It would be hard to mention any power of a state government more essential to the well-being of the people of the state than the power to regulate corporations. A corporation is the creature of the state, with no rights or privileges but those conferred upon it by the state. Under the principle of limited liability, the vast powers for good or evil which result from the combination of persons and of capital, are balanced by no corresponding responsibility. The extent to which a large and wealthy corporation can defy the state needs only an allusion; every reader can supply the illustrations. The various commonwealths deal in very different ways with this problem of the corporation. In some states a corporation can be created only by the direct act of the legislature. Presumably in these states a charter is granted only after careful investigation, and after the legislature becomes satisfied by inquiries as to the men seeking incorporation—their characters, their purposes and their means—that the public good will be promoted thereby. But on account of distrust in the integrity of legislators, many states have by general laws made the right to incorporation practically free to all citizens. In Illinois, for example, any five men who are able to pay five dollars for a certificate can get incorporated, and can enjoy all the privileges and immunities attaching to that condition. The Supreme Court is advancing rapidly towards the position that such a self-created corporation is entitled in another state to all the privileges of a corporation there created by special act of the legislature; and the Illinois corporation would have by the constitution this additional right, that all its litigation with the citizens of the state in which it lived and did business could be transferred from the courts of that state to those of the United States.

The people of the Western states have suffered particularly from foreign corporations. A citizen who deems himself wronged by a railroad company doing business in his own, but created in another state, can not afford to sue the company, because the latter will have the case transferred to the federal

courts. The state courts are held in every county and the citizen could afford to sue in them ; but the federal courts are held at only two or three points in the state, and litigation hundreds of miles from home is very expensive. A farmer in the extreme of southern Illinois has \$1000 of insurance on his house, which is damaged by fire. He says it will take the full amount to repair the house. The Minnesota or Ohio or New Hampshire insurance company says to him : Take \$250 or sue ; and if you sue, we can get the case removed into the federal court, and you and your lawyers and your witnesses will have to go to Springfield, and as the federal docket is crowded, you will have to wait a good while at considerable expense.

Whether or not any constitutional remedy be practicable, there is a real evil here, and this evil is just as proper a subject for the speculations of the Supreme Court as are the possible abuses that might arise if states were allowed to touch incidentally interstate commerce and foreign corporations. To remedy this evil the state of Wisconsin passed a law requiring that foreign corporations, before attempting to do business in the state, should waive their right to transfer litigation to the federal courts. This was decided by the Supreme Court in *Morse vs. Insurance Company*, 20 Wallace, 445, to be unconstitutional. Then the state enacted that no foreign corporation should do business in the state without taking out a license, and that the state officers should revoke the license of any corporation that transferred to the federal courts suits brought against it by citizens of Wisconsin. In 1876, the Supreme Court upheld the constitutionality of this law in the case of *Doyle vs. Insurance Company*, 4 Otto, 535. Justice Hunt, now dead, read the opinion of the court, and Justices Miller and Bradley, still on the bench, and Swayne, deceased, filed a dissenting opinion. The opinion of the court asserted the following principles, as stated in the syllabus :

A state has the right to impose conditions, not in conflict with the constitution or the laws of the United States, to the transaction of business within its territory by an insurance company chartered by another state, or to exclude such company from its territory, or having given it a license, to revoke it with or without cause.

The legislature of Wisconsin enacted that if any foreign insurance company transferred a suit brought against it from the state courts to the federal courts, the secretary of state should revoke and cancel its license to do business within the state. An injunction to restrain him from so doing because such a transfer is made, cannot be sustained. The suggestion that the intent of the legislature is to accomplish an illegal result, — to wit, the prevention of the resort to the federal courts, is not accurate. The effect of this decision is that the company must forego such resort or cease its business in the state. The latter result is here accomplished.

As the state has the right to exclude such company, the means by which she causes such exclusion, or the motives of her action, are not the subject of judicial inquiry.

About 1885 Iowa enacted a similar law affecting railroads; as to insurance companies, Illinois followed the example of Wisconsin ten years ago.<sup>1</sup> The Chicago and Northwestern railroad, doing business in Iowa, continued its business without taking out a license. To make a test case an engineer was arrested for violating the law, and this case, *Barron vs. Burnside*, was decided by the Supreme Court in April, 1887. The court held that the part of the law requiring a license to be taken out was invalid, because another part of the law provided for the withdrawal of the license in case the railroad company removed a suit to the federal courts. In the Wisconsin case, the court had refused to inquire into the motives actuating the legislature in the enactment of the law. "An emotion, or a mental proceeding," it was said, is not "the subject of inquiry in determining the validity of a statute." But in the Iowa case, the entire attention of the court was turned upon the emotion or mental proceeding in the members of the legislature who enacted the law. The requirement of a license was declared unconstitutional because of the motive that prompted it.<sup>2</sup> In reading the opinion, 121 U. S. 186, Justice Blatchford sought

<sup>1</sup> For analogous legislation in Indiana, in reference to foreign loan companies, see the *POLITICAL SCIENCE QUARTERLY* for March, 1890, p. 71.

<sup>2</sup> "The manner in which, in this statute, the provisions on these subjects are coupled with the application for the permit and with the stipulation referred to, shows that the real and only object of the statute, and its substantial provision, is the requirement of the stipulation not to remove the suit into the federal court." 121 U. S. 197.

pass over the contradiction between it and that in Doyle Insurance Company. Of the latter he said: "The point of decision seems to have been that as the state had granted license, its officers would not be restrained by injunction by virtue of the United States from withdrawing it." If the passage above quoted does not refute this statement, the following extracts from the formal opinion may be added:

"License to a foreign corporation to enter a state does not involve a permanent right to remain, subject to the laws and constitution of the United States. Full power and control over its territory, its citizens and its business belong to the state.

"A state has the power to do an act, its intention or the reason by which it is influenced in doing it cannot be inquired into. . . .

"The argument that the revocation in question is made for an unconstitutional reason cannot be sustained. The suggestion confounds an act with an emotion or a mental proceeding which is not the subject of inquiry in determining the validity of a statute. An unconstitutional motive or intention is an impracticable suggestion which cannot be applied to the affairs of life.

"It is said that we thus indirectly sanction what we condemn when stated directly: to wit, that we enable the state of Wisconsin to make an agreement to abstain from the federal courts. This is an incorrect statement." The effect of our decision in this respect is that the state may compel the foreign company to abstain from the federal courts, or to cease to do business in the state. It gives the company no option. This is justifiable because the complainant has no constitutional right to do business in that state; that state has authority to exclude at any time that it shall not transact business there. This is the point in the case, and without reference to the injustice, the prejudice or the wrong that is alleged to exist, must determine the question. The right of the complainant under the laws or constitution of the United States by its exclusion from the state is infringed; and this is what the law accomplishes. There is nothing therefore that will justify the reversal of this court.

This is overruled by the same court in *Barron vs. Burn-*

According to the opinion here, the foreign corporation in Iowa by right and not by grace. When it is proposed to exclude it, it can go into court and show that the reason why exclusion is sought is an improper one. A corporation may

possibly be reached by the state that created it, but it now has an iron clutch upon every state that did not create it. It is the foreign corporation, like the foreign drummer, that is privileged.

Two months after this decision, the state of Massachusetts had a visit from a foreign corporation. The state had for some reason that seemed good to it decreed a few years before that thereafter no gas company should be organized with more than \$500,000 capital. When some gentlemen thought they saw a chance to make a great deal of money by buying out all the Boston gas companies and obtaining a monopoly of the lighting of the city, they went over to New York and got themselves incorporated, with a capital of \$3,000,000. Then they returned to Boston and began to gather in the gas companies, as all the gas companies of Chicago have since been gathered in by one great corporation. It was probably to guard against this very thing that the limitation upon capital was enacted. But the Massachusetts legislature is powerless to protect the city in which it sits, because New York can grant an incorporation that is perfectly good in Boston. The New York gas company in Boston has all the privileges that a Massachusetts company would have, and two besides: it can take its litigation into the federal courts, and it cannot be deprived of its charter by the legislature of Massachusetts. The New York legislature might be able to annul its charter; but the company would not be troubling any citizens of New York, and the statesmen at Albany could not be expected to exert themselves in behalf of the citizens of Boston. Congress might have power to interfere, but Congress cannot get time to give the necessary legislation to the city of Washington; what would it be likely to do for Boston?

The Supreme Court can take but one step farther in the direction in which it has travelled from *Doyle vs. Insurance Company* to *Barron vs. Burnside*: it can affirm that the rights of corporations are inalienable, and that a corporation created by one state, or self-created under the laws of one state, has the same rights in every other state that the citizen of one state has in every other state.



## V

In the case of *Gus. Leisy & Co. vs. A. J. Hardin*, commonly called the Original Package Case, decided April 28, 1890, the Supreme Court has changed the law (1) as to the power of the several states to regulate the liquor traffic, (2) as to the distinction between merchandise brought from a sister state and that brought from a foreign country, and (3) as to the point at which imported merchandise passes from national to state regulation; and in each instance, the power of the central government is enlarged, and that of the state is curtailed.

The right to regulate the liquor traffic in all forms and degrees had been uniformly held by the Supreme Court of the United States to be within those police powers which belong to the several states, even though their exercise has an indirect effect upon interstate or even foreign commerce. A long list of citations in support of this will be found in the dissenting opinion of Justice Gray — Justices Harlan and Brewer concurring — in the Original Package Case. In *Pierce vs. New Hampshire, License Cases*, 5 Howard, 564, the court affirms the right of New Hampshire to prevent the sale of liquor brought from Massachusetts and offered for sale by the importer in the original package, — the precise point decided the other way in the late case. In *Mugler vs. Kansas*, 123 U. S. 623, the court affirmed the right of a state to prohibit the manufacture of intoxicating liquors even when it destroyed the value of buildings erected long previous to the prohibitory enactment. In *Kidd vs. Pearson*, 128 U. S. 1, the court upheld a law of Iowa forbidding the manufacture of alcoholic liquors for export and sale outside of the state. The net result of all this is that a state may enact a prohibitory law; it may virtually confiscate property by forbidding the use of a brewery for brewing, or a distillery for distilling; it may even regulate interstate commerce by forbidding the export of alcoholic liquors: but it must not forbid the import of liquors, or their sale in "original packages."

How completely such a decision as that in the Original Package Case would destroy all state regulation of the liquor



traffic, probably the most important subject of its police powers, was foreseen by the justices who decided the License Cases.<sup>1</sup> The Supreme Court of 1847 sought for the power to enable the people of the several states to regulate their own affairs in their own way ; the Supreme Court of 1890 sought for excuses to break down this power. One of these excuses was found in the opinion in *Bowman vs. Chicago and Northwestern Railway*, 125 U. S. 465, and another in the venerable case of *Brown vs. Maryland*, 12 Wheaton, 419. As to the former, Justice Gray said in his dissenting opinion :

While Mr. Justice Field in his separate opinion (125 U. S. p. 507) intimated, and three dissenting justices (pp. 514, 515) feared, that the decision was in effect inconsistent with the decision in the License Cases, Mr. Justice Matthews, who delivered the judgment of the majority of the court, not only cautiously avoided committing the court to any such conclusion, but took great pains to mark the essential difference between the two decisions. On the one hand, after making a careful analysis of the opinions in the License Cases, he said : "From this analysis it is apparent that the question presented in this case was not decided in the License Cases. The point in judgment in them was strictly confined to the right of the states to prohibit the sale of intoxicating liquor after it had been brought within their territorial limits. The right to bring it within the states was not questioned."

In *Brown vs. Maryland* the Supreme Court decided that a state law imposing a license tax upon importers was invalid, as a regulation of foreign commerce ; and Chief Justice Marshall said : "It may be proper to add that we suppose the principles

<sup>1</sup> Justice Catron said (5 Howard, 608) : "To hold that the state license law was void as respects spirits coming in from other states as articles of commerce would open the door to an almost entire evasion, as the spirits might be introduced in the smallest divisible quantities the retail trade would require." Justice Woodbury said (p. 625) : "If . . . anything imported from another state, foreign or domestic, could be sold outright in the package in which it was imported, not subject to any license or internal regulation of a state, then it is obvious that the whole license system may be evaded and nullified, either from abroad or from a neighboring state. And the more especially can it be done from the latter, as imports may be made in bottles of any size, down to half a pint, of spirits or wines ; and if its sale cannot be interfered with or regulated, the retail business can be carried on in any small quantity and by the most irresponsible and unsuitable persons, with perfect impunity." Cf. also the remarks of Justice Grier, pp. 631, 632.

own in this case apply equally to importations from a sister state. The court in the Original Package Case lays great emphasis on Marshall's supposition, and is unable to see any reason for making a distinction between importations from a foreign country and from a sister state. Yet it is only five years since the court made this distinction as explicitly as possible. In *Woodruff vs. Houston*, 114 U. S. 622, Justice Bradley, reading the opinion of the court, affirmed the right of Louisiana to tax coal brought from Pennsylvania and offered for sale in New Orleans in the original packages — flatboats — in which it was brought from Pennsylvania. He said :

It was decided by this court in the case of *Woodruff vs. Parham*, 8 Wall, 123, that the term "imports," as used in that clause of the constitution which declared that "no state shall, without the consent of congress, lay any imposts or duties on imports or exports," does not apply to articles carried from one state into another, but only to articles imported from foreign countries into the United States. In that case the city of Mobile had by ordinance passed in pursuance of its charter authorized the collection of a tax on . . . sales at auction. . . . *Woodruff* and others were auctioneers, and were taxed under this ordinance for sales at auction made by them, including the sales of goods, the products of other states than Alabama, received by them as consignees and agents, and sold in the original and unbroken packages; but as the ordinance made no discrimination between the sale at auction of goods produced in Alabama, and goods produced in other states, the court held that the tax was not unconstitutional. The contrary result must have been reached under the ruling in *Brown vs. Maryland*, 12 Wheaton, 419, if the constitutional prohibition referred to had been held to include imports from other states as well as imports from foreign countries; for, at the time the tax was laid, the introduction of the goods, in reference to their introduction into the state, was precisely the same in one case as in the other. This court, however, after an elaborate examination of the question, held that the terms "imports" and "exports" in the clause under consideration had reference to goods brought from or carried to foreign countries alone, and not to goods transported from one state to another.

The court explains, as one reason for allowing Louisiana to tax the coal in question, that otherwise the coal might entirely escape taxation. And so we reach the conclusion that the

Supreme Court will refuse federal protection to the coal that seeks to escape taxation, but will draw the awful circle of our national authority around the bottle containing one glass of Illinois beer whose existence is threatened by the state of Iowa.

This case of *Brown vs. Houston* also gives us some information as to what the Supreme Court thought on May 4, 1885, about the point at which an import passed under the authority of state law. Justice Bradley said :

It [the tax] was imposed after the coal had arrived at its destination, and was put up for sale. The coal had come to its place of rest, for final disposal or use, and was a commodity in the market of New Orleans. It might continue in that condition for a year, or two years, or only for a day. It had become a part of the general mass of property in the state, and as such it was taxed for the current year (1880), as all other property in the city of New Orleans was taxed. Under the law it could not be taxed again until the following year. It was subject to no discrimination in favor of goods which were the product of Louisiana, or goods which were the property of citizens of Louisiana.<sup>1</sup> It was treated in exactly the same manner as such goods were treated.

It appears in the cross-light of these two opinions that coal became "a part of the general mass of property in the state" as soon as it "had arrived at its destination and been put up for sale." But beer remains an import under the especial protection of the United States government, and not until it has been sold by the importer and the "original package" has been broken can the state touch it directly or indirectly. After the beer has been consumed, however, the state may arrest the consumer for disturbing the peace.

The reason why the constitution gave Congress the power to regulate interstate commerce seems to receive little attention from the Supreme Court. In *Bowman vs. Railway* the reason was alluded to, but the reasoning was rather misused than used. The power to regulate interstate commerce was conferred on Congress to prevent any state from surrounding itself with a

<sup>1</sup> It was Justice Bradley who explained in *Robbins vs. Shelby County Taxing District*, that a tax on products of another state was a regulation of interstate commerce, and invalid even if it created no discrimination. Cf. p. 398, *supra*.

ctive tariff. The essential thing provided for was, as set in *Brown vs. Houston*, that one state should not discriminate in favor of its own and against the citizens of another

Until recent years this is all the Supreme Court has had upon. But the court is now declaring that a state must not even indirectly touch interstate commerce, even though it touches its own commerce in exactly the same way. An Ohio brewer in Tennessee is exempt from the tax the Tennessee brewer must pay. The Illinois brewer may flood Iowa with beer though every Iowa brewery be closed by the legislature of that state. Justice Matthews objected to the Iowa statute upheld in *Bowman vs. Railway* because in analogy with it Iowa might establish a protective tariff in favor of her own citizens against those of other states. But this is an entire misapprehension of the analogy. If the state of Iowa prohibits the sale of a certain article believed to be dangerous or deleterious, whether made in Iowa or in Illinois, no discrimination in favor of Iowa and against Illinois is effected, and nothing remotely resembling a state protective tariff is established.

Had the Supreme Court sufficiently attended to the purpose underlying the constitutional grant of power to Congress over interstate commerce, these contradictory opinions would have been avoided, and this national destruction of state prohibitory power—this invasion by the federal government of a domain for over a century has been regarded as within the power of the states, would have been wholly unnecessary.

There was a justice of the supreme court of Wisconsin who joked humorously of himself and his colleagues that they were always right because they always had the last guess. Some courts not only have the last guess, but they have the opportunity of guessing more than once at the same conclusion.

FRED. PERRY POWERS.

## STATE CONTROL OF CORPORATIONS AND INDUSTRY IN MASSACHUSETTS.

### I.

**I**N our new era of industrialism the people are compelled to look to the state for help. Competition is tending to take a subordinate place, and it can no longer be regarded as the means by which the evils in our producing and distributing systems are to be suppressed. We cannot expect, as did the economist of the past, that the selfish interests of men will so operate against one another as to force competitors in manufacture, trade and transportation to give the public the largest service, the lowest prices, the greatest privileges and the fullest justice. Business strife becomes so drastic in its effects, at times, that it operates against the welfare of all competitors and goes beyond the most exacting requirements of the public good. Combination, instead of competition, is the conspicuous fact in our industrialism to-day. Stimulated partly by the necessity that all or nearly all competitors should survive, rather than that all should perish, and partly by regard for the great and rapidly returning profit which may be extorted by a monopoly, the effort of our producers, our traders and our common carriers is toward the trust, the pool or some other kind of combination. By these it is hoped that competition may be put aside and that prices may be made at least to cover the cost of service or production, and if possible to stand at the maximum which consumers can be forced to pay. That all combinations are maintained for the sake of undue profit, is not admitted ; that such is the purpose of some of them, official investigations prove. The development of combination in place of competition has been accompanied by the discovery that monopoly, if properly managed, is often economically advantageous. Under proper management, a railroad, a telegraph or telephone system or

for the public supply of gas and water should be a monopoly. Indeed, almost the entire distribution of the products of industry might be effected more economically by monopoly than by competition. A village would be better off, economically, with one grocery sufficient for the public service than with the dozen or score that it has. One paper manufacturing company with a large product may be better than two or three companies each with a small product. While such monopolies have been forcing themselves into recognition, the state has been creating corporations with a free hand and has indeed, by general laws, placed the organization of a corporation within the power of any group of citizens, without further reference to the legislature. In this new order of things great evils have sprung up, due to abuse of their privileges and excess of their power by corporations and by all classes of monopolies. These evils are too well known to be recited here.

On the facts thus concisely stated, rests the necessity for some sort of state action toward corporations and industry. A wide range of propositions is open to the theorist. At one extreme is the anarchy which would abolish the state. Next to this is the still existing reliance upon competition ultimately to cope with the evils arising from the abuses of combination; in other words, to say, we are to stand inertly by and see wealth dissipated by extortion, content with reflecting that the procedure will possibly exhaust itself in time. Then there is Herbert Spencer's let-alone theory, which allows the state just enough power to enforce contracts and to maintain the equal liberty of all citizens, with a very narrow conception of liberty. Under this theory the monopoly of a railroad or gas company could not be defended, nor could a trade combination be subjected to regulation. We next pass by one long step to a "school" which would radically remove the source of these evils by substituting public ownership for private ownership. The municipality is to own and operate its gas works, and the state its railroads and telegraphs. If it is necessary that this step should be taken, the ultimate destination is nothing short of full social industrialism. The argument which justifies the public acquisition of any of the

natural monopolies must lead eventually to the acquisition of all of them. Nor can it stop here. The trade combination is yet in its infancy and there is reason to believe that, with the strengthening of the spirit of co-operative effort which must go on as our civilization advances, this combination must approach much nearer to a permanent monopoly than it now is. We already have artificial monopolies with much of the power of natural monopoly while they last. They will in the end require substantially the same treatment. If trade combinations are repeatedly broken, they are also repeatedly renewed, and in the present state of popular ignorance regarding their effects, their renewal is the more fearful fact. The general public, it is believed, suffers more from some trade combinations than it does from the private management of railroads, telegraphs and the gas business. If the telegraphs should be owned by the state, so should the coal mines, the paper mills, the sugar and petroleum refineries.

But it may not be necessary to go into social industrialism at all. We should be slow and cautious about surrendering our liberty to the state. The burden of proof certainly rests upon him who would persuade us to do this. We would not have the state forbid all persons to go to Saratoga in order that a gambling house there might be closed for want of gamblers. That would be a great outrage upon liberty. The industrialism of the Peruvians before the Spanish conquest could not produce a millionaire outside of the reigning family, and wealth, such as it was, was distributed among the masses of the people with an evenness that no civilized nation has ever attained; but this result was not worth the great sacrifice of liberty that it cost. In proportion as the suppression of liberty advances, the plane upon which individual effort may act is limited and lowered. The Peruvian, whose industrial state is worthy of more attention than has generally been given to it in connection with this subject, had so little scope for private initiative that his social evolution could proceed only on the plane that had been prescribed for him, and there not freely. The type of his social and industrial institutions was crystallized. The ques-

What confronts us is whether we want to crystallize our socialism at the present stage of its evolution, so that it shall not be further changeable. Ought we not to wait the age of co-operative production and distribution shallstrate what it can do?

## II.

The experience of Massachusetts in this matter points out a course of state action which promises to render further steps toward social industrialism unnecessary. This state is regulating corporations and industry on a large scale and with much success. The results indicate that for the most effective suppression of the evils arising from the improper management of corporations and monopolies, with the least encroachment upon the liberty of the individual, the best means is to be found in the extension and perfection of the system here employed. It consists of various boards of commissioners which the state has established, with large discretionary powers, for the purpose of enforcing from corporations compliance with legal requirements. These are railroad commissioners, an insurance commissioner, savings-bank commissioners, gas and electric-light commissioners, an inspector of gas meters and illuminating gas, a commission of foreign<sup>1</sup> mortgage corporations, a board of arbitration and conciliation, factory and public building inspectors and a commissioner of corporations. Each of these boards acts more or less at discretion and, with the exception of the board of arbitration, has back of it a group of laws to be enforced against corporations. It is the purpose in the pages that follow to describe the administration of these state agencies.

Massachusetts is now recognizing and maintaining some of the natural monopolies. The bold stand was taken by the legislature of 1882 that no railroad corporation organized under general law should be allowed to construct a line until the railroad commissioners should have certified "that public

<sup>1</sup> Foreign, as used in the Massachusetts statutes, means foreign to Massachusetts and not necessarily foreign to the United States



convenience and necessity require the construction of a railroad as proposed." Earlier than that, the monopoly of the gas business was possible, under the law which permitted a gas company to dig up the streets of a town or city only with the permission of the selectmen or of the mayor and aldermen. A law of 1887 regarding gas companies was more explicit and forbade such a company to open the streets for laying pipes in any town or city where another gas company was doing business, except with the consent of the selectmen or of the mayor and aldermen, from whom, however, an appeal might be taken to the gas and electric-light commissioners. A similar law was applied to electric-lighting companies in the same year. The state is thus committed to the principle that natural monopolies should remain such. With the agencies at its service, Massachusetts is no longer afraid of these monopolies.

As to corporations, the first specialized agency of the state to look after their affairs was the board of bank commissioners, established in 1851, but now supplanted by the savings-bank commissioners. The board, as now established, must visit every savings and state bank each year, or oftener if expedient, and "shall have free access to vaults, books and papers, and shall thoroughly inspect and examine all the affairs of each of said corporations, and make such inquiries as may be necessary to ascertain its condition and ability to fulfil all its engagements and whether it has complied with the provisions of the law." The laws whose enforcement is thus enjoined provide for a division of the risks of investments, name the classes of securities that may be taken and relate to the treasurer's bond and other precautions to preserve the solvency of the banks. The commissioners are to notify the attorney-general to bring suit for injunction or other order of the court in case of violation of law. A bank becomes insolvent now and then through embezzlement or mismanagement; for the frailties of human nature will manifest themselves under any political or industrial system; but, in that event, the liquidation is so managed that depositors usually get all or nearly all of their deposits. The savings-bank commissioners make annual return of their actions and of the

al condition of every savings bank, institution for savings and trust company and co-operative bank.

board of insurance commissioners was established in 1855, there is now only one commissioner. As often as once every year he is required personally or by his deputy or chief clerk to visit each domestic insurance company and thoroughly examine its affairs, especially as to its financial condition and as to whether it has complied with the laws. He may also make an examination whenever he deems it prudent or upon the request of policy-holders, creditors or other persons pecuniarily interested in a company's affairs; and he is authorized to investigate the affairs of foreign companies doing business in the state. No insurance company or fraternal beneficiary organization can do business until it has satisfied the commissioner that it has complied with the law and is financially able to assume its obligations.

When he finds that any domestic insurance company is insolvent or has exceeded its powers or has failed to comply with any provision of the law, or that its condition is such as to render its further proceedings hazardous to the public or to its policy-holders, it is his duty to apply to a justice of the supreme court for an injunction restraining the company from further doing business. For any of these reasons, more often than not, the commissioner may forbid a foreign insurance company to do business in the state. No insurance of any kind can be written except under the Insurance Act, which provides many safeguards for the interests of the policy-holders against the fraud and insolvency of the companies. The famous forfeiture law, enacted in 1861 and made more definite in 1880, annihilated one of the greatest abuses of the business. If a company's capital is impaired, the commissioner forbids it to issue more policies until its funds equal its liabilities. He reports annually what he has done and makes public the financial condition of every domestic company and "such other information and comments in relation to insurance and the interests therein as he deems fit to communicate."

Massachusetts insurance commissioners have waged an unflinching warfare against the frauds of insurance companies,

and the result is that to-day this state is unrivalled in the financial soundness of its companies and in the justice and fairness with which the policy-holder is treated. Whether his insurance is life, accident, fire, marine, fraternal or assessment, he may feel secure in all his interests. Assessment insurance companies began business a few years ago without financial responsibility, and they were likely to collapse at any moment without redress for policy-holders. One company in Massachusetts divided large dividends with the excesses of assessments, and another dissolved without the assent of its benefit members. The insurance commissioner was instrumental in having a law enacted putting this kind of insurance under his surveillance, surrounded by the proper financial safeguards. Referring to his examination of a foreign insurance company, Commissioner Tarbox said in his report for 1886:

In the examination it appeared that it has effected illegal re-insurances and made false statements to the department, and the conduct of its affairs had not been in accordance with sound business methods. Similar delinquencies were disclosed in the affairs of [another company]. The penalties for these offences were enforced against these companies upon proceedings instituted by the attorney-general and the sum of \$2,000 recovered to the use of the Commonwealth.

Commissioner Merrill, in 1887, reported that

an attempt was made to galvanize into life the defunct fraudulent ——— Benefit Association; a new name was selected, but the old managers who fostered the project could not so much as keep fraud and falsehood out of the preliminary papers submitted to the department, and the scheme came to grief without securing authority to prey upon the public.

A foreign fidelity insurance company was fined in 1886 for making a false statement, and there were several successful prosecutions of foreign companies in 1887, in which year, also, the public was warned against a certain fraudulent Indiana life insurance company. If more were needed, many references to reports might be given to show how thorough an oversight is exercised by the insurance commissioner over the business

of the companies, and how effective it is in securing financial responsibility and in preventing fraud.

The successful mission of the board of railroad commissioners, established in 1869, has been one of the great and important facts of government. This board had for examples the achievements of the savings-bank and insurance commissioners, but it had a vastly greater undertaking than theirs. The general and to some extent the special character of its duties are outlined by the law :

The commissioners shall keep themselves informed as to the condition of railroads and railways and the manner in which they are operated with reference to the security and accommodation of the public, and as to the compliance of the several corporations with their charters and the laws of the Commonwealth.

The board, whenever it deems that repairs are necessary upon any railroad, or that an addition to its rolling stock or an addition to or change of its stations or station houses or a change in its rates of fares for transporting freight or passengers or in the mode of operating its road and conducting its business is reasonable and expedient in order to promote the security, convenience and accommodation of the public, shall in writing inform the corporation of the improvements and changes which it considers to be proper.

In case of a violation of law by a railroad corporation, the attorney-general is to be notified to bring suit. Upon complaint of the selectmen, the mayor and aldermen or twenty legal voters of any town or city, the railroad commissioners are to examine the condition and operation of any railroad partly located in said town or city and to recommend any action they deem necessary. The annual report of the commissioners is to include

such statements, facts and explanations as will disclose the actual working of the system of railroad transportation in its bearing upon the business and prosperity of the Commonwealth, and such suggestions as to its general railroad policy or part thereof, or the condition, affairs or conduct of any railroad corporation, as may seem to it appropriate.

Only the more important of the laws whose enforcement is imposed upon the commissioners can be mentioned here :

No railroad, or branch or extension of a railroad, shall be opened for public use until the board, after an examination, certifies that all the laws relating to its construction have been complied with and that it appears to be in a safe condition for operation.

No railroad company shall, in its charges for the transportation of freight or in doing its freight business, make or give any undue or unreasonable preference or advantage to or in favor of any person, firm or corporation, nor subject any person, firm or corporation to any undue or unreasonable prejudice or disadvantage.

Every railroad corporation shall give to all persons or companies reasonable and equal terms, facilities and accommodations for the transportation of themselves, their agents and servants and of any merchandise and other property upon its railroad, and for the use of its depot and other buildings and grounds ; and at any point where its railroad connects with another railroad, reasonable and equal terms and facilities of exchange.

The capital stock of a railroad company can be increased only with the consent of the railroad commissioners or by special legislative act, and there is a strict law against stock watering. There are provisions regarding brakes and brakemen, tools for use in case of accident, non-explosive fluid for lighting cars and mufflers to accompany vacuum brakes and safety valves on engines. Employees must be examined for color-blindness, checks must be given for baggage and receipts for freight, and "reasonable accommodations for the convenience and safety of passengers" must be supplied. The fares, tolls, charges and regulations of a railroad company are at all times subject to revision and alteration by the General Court or by such officers or persons as it may appoint for the purpose. No highway or railroad is allowed to cross a railroad at grade except with the consent of the commissioners and under regulations prescribed by them. Railroad companies must forward merchandise as directed and not by a different route. Milk cans must be carried as advantageously for the small shipper as for the large one, — a rule designed to prevent the practice which prevailed at one time of forcing farmers to ship through a middleman who hired whole cars. Connecting railroad companies must draw each other's passengers and freights. The

ous short-haul law, enacted in 1874, has been fully enforced without entailing evil, though it may not be adapted to the rough traffic of a continent. The railroad commissioners are now made arbitrators in the cases of some questions arising between railroad companies in their relations with one another. They investigate and publicly report the causes of every accident deserving attention, and advise a company which is at fault to change the practice or condition that led to the accident. Explosives can be transported only under the regulations of the commissioners. Street railway companies are under their jurisdiction, and are also under the regulative power of local authorities in regard to speed of cars, use of tracks and removal of ice and snow. The commissioners have full power to revise and regulate the fares of street railways, but not the passenger and freight rates of steam railroads, except charges for transporting freight; beyond this their power in regard to charges is only advisory.

The variety and minute detail of the commissioners' jurisdiction may be well seen from the following results of their activity: companies have been compelled to grant facilities for carrying on the express business to petitioners to whom such facilities had previously been denied, and to accord terms reasonable and equal to those given to competitors; to give better accommodation in the checking of baggage; to give lower rates for higher speed in the transportation of fish from Cape Cod to Boston; to abate the public nuisance of whistling at certain crossings; to render dangerous crossings safe; to change the location of a station in accordance with the wishes of the public against the wishes of the company, and to modify the construction of stations for greater convenience; to run workingmen's trains; to observe legal precautions at the crossing of streets; and to build stations and stop trains at summer resorts. Furthermore, such acts as the following appear in the record of the commission's work: a project of street railway officers to build a road on borrowed capital and to get the road into their hands without putting in any of their own money, was referred to the attorney general, who prevented its success; a

sea-beach railroad company, which had discontinued all trains in the winter, was compelled to run one train daily ; a milk train was stopped every day at an obscure station ; an express train was stopped at a station previously passed by ; a discontinued train was restored ; a new accommodation train to Boston was run ; coal freights were reduced 15 per cent ; the operation of a railroad was stopped because its construction was illegal ; the speed of an express train was slackened when running by a station where another train was taking on passengers ; a through car from a certain town to Boston was added to a train ; the discontinuance of a station was prevented, as was also the execution of a threat to stop the issue of half-rate tickets to school children ; air brakes were substituted for hand brakes ; discrimination in freight rates and violation of the short-haul law were stopped ; and defects in track and road-bed, as reported by a civil engineer employed as inspector, were remedied.

The administration of the Railroad Act has accustomed the companies to obedience to a law or to a decision given by the commissioners, without the further intervention of the board. For instance, a law of 1885 gave the commissioners, upon petition of municipal authorities, power to regulate or forbid the use of level crossings for the purpose of making up or disconnecting freight trains. At once either these obstructions to travel wholly ceased or railroad managers began improvements which remedied the evil. If there is one place in the state where a highway crossing is unreasonably used by freight trains to public annoyance, it is because there is not local public spirit enough to produce a complaint. A company rarely refuses to comply with a recommendation of the commissioners. In case of such a refusal the legislature is likely to interpose and by special law to compel obedience. One instance of this kind was the refusal of a company to reduce freight rates, and another a refusal to provide better access to a station. The decisions of the commissioners are by no means invariably in favor of complainants and petitions are in numerous cases denied. Indeed, the board is the best protection that the railroad companies have against hasty and unwise action by the legislature.



The public interests under the general law of incorporation are protected by the commissioner of corporations, whose office was established in 1870. The organization of new corporations must by law follow a certain public procedure with safeguards against fraud and financial irresponsibility, and the incorporation is not complete until the commissioner of corporations is satisfied that the law has been complied with. No corporation organized under general or special law can begin the transaction of business until the whole amount of its capital stock has been paid in, in cash or its equivalent, and a sworn certificate of the fact filed with the Secretary of the Commonwealth; and every increase of stock is equally well protected against watering.

The gas business was placed under the supervision of commissioners in 1885. In 1861 the office of inspector of gas meters and illuminating gas was established, and his duty was and still is to inspect, prove and ascertain the accuracy of all gas meters and to see that the purity and illuminating power of all gas used for lighting reach the statutory standard. The gas of every company is to be inspected twice a year and once more for every 6,000,000 feet of gas sold. No meters must be used that do not bear the seal of the inspector. The gas and electric-light commissioners have this officer at their service. To these commissioners is assigned "the general supervision of all corporations engaged in the manufacture and sale of gas for lighting or for fuel" and of all electric-lighting companies, and they are required to "make all necessary examinations and inquiries to keep themselves informed as to the compliance of the several corporations with the provisions of the law"; in case of non-compliance, the commissioners notify the attorney-general. Upon the complaint of the mayor of a city or of the selectmen of a town in which a gas or electric-lighting company is situated, or of twenty customers of such company, the commissioners are to give a public hearing to the petitioners and the company; after such hearing, they may order any reduction they deem just and proper in the price of gas or electric lights, or any improvement in the quality thereof, and they must pass such



orders and take such action as are necessary thereto. These commissioners make annual reports of their proceedings, including information about the price of gas and its reduction or increase and many statistics. Water gas may be manufactured and sold with their permission. In the prosecution of their duty, the commissioners have procured the fining of a company for selling impure gas, have lowered the price of a company's gas and have reported a company for issuing a stock dividend. The local authorities of every municipality also have power to regulate gas and electric-lighting companies so far as the acts of such corporations "may in any manner affect the health, safety, convenience or property of the inhabitants of such place."

The express, the telegraph and the telephone business are not yet under the supervision of commissioners, but selectmen and mayors and aldermen may establish reasonable regulations in reference to the erection and maintenance of all telegraph and telephone lines within their respective municipalities; and express, telegraph and telephone companies are forbidden by law to discriminate among customers in their charges and accommodations.

The board of arbitration and conciliation, established in 1886, has power to bind by its decision for a limited length of time, not exceeding six months, employers and their employees who unite in submitting their differences to it for arbitration. Upon the application of either party or upon its own motion, the board may publicly investigate all controversies between employers and employees, and may attempt to conciliate the parties. This board is yet too young to have made any great record for itself, but its mission so far has been generally successful and its recommendations have been substantially complied with in cases submitted to it by both parties. In the performance of its duties it has given advice in favor of the restoration of men to work who were discharged on account of being union men; against the reduction of the wages of coal heavers; against the discharge of bricklayers because they were not union men; in favor of shortening the hours of work of some of the paper-mill operatives. It has established labor price lists

in the boot, shoe and granite-cutting industries, and has prescribed rules of work and decided questions regarding the speed of machinery and the character of the stock used in manufacture. An annual report of its doings is required of the board; that for 1887 says:

The board has been frequently consulted, as well by employers as by workmen and workingwomen, in regard to differences which did not call for an extended inquiry and were quietly adjusted without publicity and without any formal hearing or adjudication by the board.

Yet another agency for regulating corporations is found in the inspectors of factories and public buildings, a body created in 1878 and consisting of twenty-three members drawn from the district police. The duties of the inspectors are increased almost every year and, among other things, now include the enforcement of the factory laws and the laws regarding the employment of women and minors. No woman or minor under 18 years of age may be employed for more than ten hours a day in any manufacturing or mechanical establishment, and time for meals must be allowed them as specified. Seats must be provided for females, who must be allowed to sit down when their work permits. No child under 13 years of age may be employed in any factory, workshop or mercantile establishment; a child between 13 and 14 years of age may be so employed only upon the permissive certificate of the local school committee that he is 13 years of age and has attended school for twenty weeks during the preceding year. Children under 14 years of age must not be allowed to clean machinery when it is in motion. No building designed to be used above the second story in whole or in part as a factory, workshop or mercantile or other such establishment may be built until its plan has been seen and approved by an inspector, who will require fire escapes, ample facilities for egress and certain precautions against fire. These latter requirements apply also to all such buildings erected before the enactment of the law. The statute book contains a wide range of provisions for the health and safety of factory employees. The inspectors are to see that these laws

are observed and, upon the request of the municipal authorities, they must inspect any building used for industrial purposes.

The character and workings of the law may be seen from the following orders actually given by inspectors: Safety clutch to be provided for elevator and elevator openings to be guarded; railings at stairways to be securely fastened; means for extinguishing fires, new hoisting cable and additional egress to be provided; certificates of children employed to be obtained and kept on file; guards for belts, pulleys, machinery, shafts and fly wheel of engine; doors to be kept unlocked during working hours; fire escape to be repaired; better access to fire escape; seats to be provided for women; doors to swing outwardly; and so on. By secret complaint to the inspector of his district a workingman may secure the benefit of these laws without inviting the antagonism of his employer. In 1886, 1,083 factories and manufacturing or mercantile establishments and 282 public buildings and tenements were inspected and 488 orders were issued, which were generally complied with.

Finally, in 1889 a commissioner of foreign mortgage corporations was created, with powers and duties similar to those of the savings-bank commissioners.

### III.

Of the success of the regulative state agencies which we have been considering, their own reports contain fair statements. From the railroad commissioners we have such paragraphs as the following:

Grievances, when brought to the attention of railroad managers, have been so promptly redressed that any publication of the fact that they had existed would be an act of injustice. Matters which would once have been the subject of long continued newspaper discussion, followed by protracted and heated debate at the state house, have been quietly arranged as soon as the parties have been brought face to face. Questions which promised costly litigation have been settled by conference, or even by an exchange of notes.<sup>1</sup>

No law in the state is more thoroughly enforced than [the short-haul law]. Indeed, it would be more correct to say that, instead of being

<sup>1</sup> Report for 1882.

enforced at all, it is universally acquiesced in and obeyed. It is true that in 1882 it was shown that a railroad company in this state was acting in violation of this law. But upon receiving the opinion of this board that it was so offending, the corporation desisted from the practice and lowered its rates to conform to the statute requirements. [This law] has remedied a great evil and a great injustice; it has helped to save small industries and small places from being crushed out of existence; it has checked the tendency to consolidation which would build up one place or a few places at the cost of local enterprise.<sup>1</sup>

It might with confidence be claimed that there is to-day no portion of the industrial machinery of Massachusetts which, upon the whole, is conducted under a stronger sense of responsibility to the public or with so great freedom from abuses in the conduct of its business or with so anxious a desire to give reasonable satisfaction, as the railroad system of the state. In all these respects the improvement in tone which has taken place within the last few years is most noticeable and the result is apparent, even though as yet not generally realized. There has in consequence been a rapid decrease of complaints against the corporations and a no less rapid subsidence of that restless feeling of hostility which was so marked a feature in the discussions of a few years back.<sup>2</sup>

From the insurance commissioner we have the following paragraphs, taken from his reports for 1883, 1885 and 1887 respectively:

While elsewhere serious scandals have disgraced the business management and impaired confidence in the [life insurance companies] and numerous unworthy organizations have abused and betrayed the trust reposed in them, no company organized by the authority and subject to the laws of Massachusetts has defaulted in any of its obligations.

Since Massachusetts inaugurated its bureau of insurance thirty years ago, a great improvement has been wrought in the condition of our insurance interests, in the accomplishment whereof the bureau has borne an influential part. It has prompted wholesome laws and methods and the honorable enterprises of legitimate insurance. What it has helped to establish it is still needed to conserve and advance.

There is at the present time a general disposition to cordially comply with legal provisions in the transactions of business within the Commonwealth.

Insurance Commissioner Tarbox, in his report for 1885, quotes a distinguished underwriter as saying:

<sup>1</sup> Report for 1884.

<sup>2</sup> Report for 1878.

The fact is that for many years these [insurance] departments have stood between the companies and unwise legislators. The writer has not forgotten that the country was full of worthless companies before the departments became general, and if the latter could be abolished, the former would be as numerous as the rascals are who would like to make money by such institutions.

The board of arbitration, in its report for 1887, uses the following language :

Experience has demonstrated the fact that, if an untenable position has been assumed for the time being, it can in no way be abandoned with so little disturbance of self-respect as by conforming to the recommendations of an impartial board, acting in the name of the state. . . . In all the cases regularly submitted by both parties, the recommendations of the board have been accepted and acted upon without material variation.

The savings-bank commissioners reported in 1885: "The system of savings banks in this state has proved itself as nearly safe as any financial system within the range of monetary experience." The factory and public building inspectors reported in 1886 an improved observance of the child-labor law and the elevator law and that accidents had diminished; they reported that they had little or no trouble in enforcing the laws.

The ascertainment and publication of facts have been the means by which Massachusetts has solved the problem of regulating corporations and monopolies. The accounts of steam and street railroads, gas and electric-lighting companies, savings and co-operative banks and foreign mortgage corporations must be kept in the manner prescribed by the various commissioners, and the accounts of all these corporations and of all kinds of insurance companies must be open to the examination of the commissioners, who are to perform this duty within certain limits of time and who are empowered to summon witnesses, including the officers of the corporations under examination. An annual report to some specified public officer must be made by every business corporation in the state; this must be sworn to, and in the case of each of those just mentioned must contain many facts of detail. This reveals to the public eye the true

financial condition of all business corporations and the profits by those specified. Upon complaint of certain interested persons, the financial condition of any railroad company, savings bank or foreign mortgage corporation must be examined by proper commissioners, and the latter have access to the books of stockholders. Literary, benevolent, charitable and scientific institutions have made annual returns of their property, income and expenditures since 1882. Water companies and public water commissioners must make triennial reports of their business, capitalization, charges and property, but not about their profits. Massachusetts corporations engaged in manufacturing and mechanical industries, mining, quarrying, *etc.*, make annual returns to state officers, and most of them have done so since 1865. The law now calls for a sworn statement of

the amount of capital stock as it then stands fixed by said corporation, the amount then paid up, the name of each shareholder and the number of shares standing in his name, and the assets and liabilities of the corporation in such form and with such detail as the commissioner of corporations shall require or approve.

The details required include the classes of assets and liabilities but do not disclose profits. The facts contained in the reports of all corporations are freely open to the public and all of them are printed for general distribution. The following paragraphs are quoted from the reports of the railroad commissioners for 1877 and 1878 respectively:

The last vestige of the old idea that the accounts of railroad corporations are matters of private concernment only and as such can best be kept in secret, must be gotten rid of. To bring about this result, a bill was prepared, a year ago, and submitted by this board to the joint legislative committee on railways. It was meant to be radical in its character, having been prepared in the full light of the many and notorious scandals of the last ten years, and with the financial revelations which followed the crisis of 1873 still fresh in mind. It subjected the accounts of the railroad corporations to a constant and regular public revision, with a view to securing accuracy and uniformity in the methods of keeping them.

The management of [railroad] lines cannot in the future continue to be a mere hotbed of abuses. That they should be managed in the full view of the public seems, therefore, a necessary condition of their continued private ownership. In Massachusetts, at least, the proposed change has now actually been effected. The books, papers and accounts of the railroad corporations are as open to public scrutiny as those of the state or city governments ; and yet not a single one of the evils so frantically predicted has ensued. On the contrary, the system works perfectly well.

But the services of these state agencies do not end here. They are also special and expert advisers to the legislature upon questions within the scope of their respective duties. Some of the best legislation that was ever put into a statute book is mainly the work of these Massachusetts boards. The Railroad Act was prepared by the railroad commissioners, the Savings-Bank Act by the savings-bank commissioners and the Insurance Act by the insurance commissioner, at the special request of the legislature. No legislative body, by any amount of committee work, can frame a reasonable code of business regulation containing many details. Insurance Commissioner Tarbox, in his report for 1884, tells us into what confusion the insurance law had fallen :

The insurance law needs comprehensive revision. It has all the vices of patchwork legislation unskilfully done by careless craftsmen. Parts of it are antiquated and obsolete and serve only to encumber and confuse. Some of its provisions are hopelessly conflicting and irreconcilable, while others are so obscure in terms and relations that only a legal expert can interpret their sense.

In his report for 1885 the commissioner continues :

Our average lawmaker cannot, or will not, qualify himself sufficiently by investigation and study of the particular matter to act with instructed judgment on subjects of a special character like insurance, and unless some impartial source of information, such as an insurance department ought to be, is available, his intelligence is liable to betrayal by vulgar prejudice or designing art into inconsiderate action.

These remarks are true of many other subjects than insurance, and the Massachusetts legislature every year shows its

dependence upon its special advisers. To the railroad commissioners have been referred questions of proposed legislation regarding safety switches, color-blindness, freight charges on goods brought into one of the counties, limitation of the number of passengers in street cars, grade crossings, the whistling nuisance, women and children in smoking cars, signals, automatic couplers, the charges of a bridge company, the heating and lighting of cars, the fencing of railroads, protection of brakemen and firemen, change of location of a railroad in a city, and many other matters. The bureau of statistics of labor has been called upon to report concerning employers' liability for injuries received by employees in their work, co-operative distribution, drunkenness, industrial conciliation and arbitration, convict labor, *etc.* The board of education has reported regarding industrial drawing, a half-mill fund for the support of public schools, evening schools, the best method of supervision, and so on. The board of health has made reports on oleomargarine, the sale and use of opium, the pollution of the sources of water supply, a general system of sewerage for the relief of a certain valley, *etc.* Reports have come from the board of lunacy and charity regarding proposed institutions for the care and reformation of drunkards; from the insurance commissioner on assessment insurance; from the savings-bank commissioners on the investments of savings banks; from the commissioners of prisons on methods of executing the death penalty; from the supervisors of statistics on the uniformity of public records. Besides making written reports to the legislature, the various state boards and agencies have repeatedly testified before legislative committees as to matters within their experience.

The general result is that the various state agencies of Massachusetts have become an effective power in a current of legislation which is producing laws that are most suitable to true legislative ends, most consistent with each other and most fairly conducive to the rights and welfare of the whole people. These agencies are powerful champions of aggrieved citizens before the legislature.



## IV.

Massachusetts could not have achieved the marked success that it has in the regulation of corporations and industry if the people had not been quick to resent offence and sensitive to public opinion. Probably the democratic government that the towns have always enjoyed is largely responsible for this. Some rigid laws announcing general principles were first necessary; but the chief portion of the effective work has been done by the commissions, depending upon full investigation and publicity of facts. It is interesting to read what some of the commissioners say regarding this kind of government. The three following paragraphs are, respectively in order, from the reports of the railroad commissioners for the years 1873, 1875 and 1878:

When the board was originally organized, great doubts were entertained whether such a method of procedure would prove effective or, indeed, of any real value. A larger experience, however, rather tends to show that, in the peculiar existing condition of the relations between the community and the corporations, this merely recommendatory power is, perhaps, best of all adapted to accomplishing many results. Theoretically, a mere power to hear, suggest and recommend amounts to nothing; practically, it may be made to accomplish a great deal, and what it does accomplish it accomplishes in the best way and with the least degree of antagonism. To exercise an arbitrary power is a very easy and short way of disposing of difficulties; but such a course inevitably leads to bitter controversies and much hard feeling. Discussion, argument and suggestion can, perhaps, in the end be made to effect as much with far less friction. Certainly the present commissioners have no disposition to ask for any increase of power.

The commissioners cannot too frequently or too forcibly remind both the legislature and the public that their chief power rests in the public feeling which they may at any time represent. Railroad corporations, as a rule, care but little for abstract principles, nor do they alter their methods of procedure in response to every suggestion, even from official quarters; they are, on the other hand, very sensitive to public opinion and they invariably yield to it when they feel that it is concentrated and persistent. To facilitate its concentration and to impart consistency to it must always remain a very important and perhaps most useful function of this board.

The board maintained that every desired result or needed reform could be secured by simply developing in the public mind the idea of corporate responsibility and supplying the necessary machinery to act directly upon it. To bring this about, it was necessary to force the corporate proceedings into the full light of publicity and to compel those responsible for railroad management, whenever an abuse was alleged, to submit to investigation and to try to show that the abuse did not exist. Failing to do this, their only alternative was to discontinue its practice, or to persist in it in open defiance of public opinion.

The insurance commissioner has an equally intelligent understanding of the sources of the success of his department. The first quoted paragraph that follows is from his report for 1886, the others from that for 1885 :

The plea that the corporations, if left to themselves, will faithfully, perform their trusts and do full justice to their policy-holders, and that therefore there is no need for legal protection to either, is not sustained by reason or facts.

The tendency, I fear, is toward a too free resort to the sword of legislation for the redress of faults in commercial intercourse. These are often more justly reformed by the process of the natural laws of trade and the force of correct public opinion than by the compulsion and arbitrary treatment of peremptory statutes. . . . Insurance departments, if faithful to their trusts, subservient neither to unwarranted popular prejudices nor to the ambitious self-interests of the companies, may do much to enlighten popular opinion upon [the principles and methods of insurance and the conditions of its successful operation] and to maintain just relations between the companies and public, to the great advantage of both.

The experience of Massachusetts demonstrates that it has found the true field of state action in regard to corporations and industry. Not that perfection has yet been attained within the whole field ; but it is apparent that, with age and extension, the policy that has now become well developed is capable of finishing the work that yet lies before it. Indeed, more has been done than remains to be done, and every further step will be looked upon as a continuance of a well settled policy that cannot now be called in question, after all the successes that it has had. When, five years ago, the entire business of the

manufacture and sale of gas and of electric lights was placed under the control of commissioners and of the strict and radical laws which stand back of them, the proceeding was accepted by the public as a matter of course and by the companies without obstruction. It may not be a rash prophecy that the time will come when the publicity of accounts now required of the railroads, showing even their profits, will be required of every corporation existing by authority of Massachusetts. Already, railroads, gas, insurance and electric-lighting companies, and savings and co-operative banks have to report the items of their receipts and expenses, as well as of their assets and liabilities ; the extension of this rule to all corporations existing for profit is all that is necessary to reduce them to the full control of the people, by whose permission alone they exist.

There are good reasons, therefore, why Massachusetts has no sympathy with the proposition that municipalities shall own their own gas works. The problem has already been solved by the suppression of that individualism only that is harmful to others. The great stock of equal liberty remains substantially unviolated. The monopoly of the gas business is defended and regulated, and there is no reasonable complaint against a gas company, from either the general public or the consumer, which is not promptly remedied without expense to the complainant. The railroad business, moreover, no longer worries Massachusetts. One may travel or receive freight over every railroad in the state and have less reason to complain against the companies than he may have in a month or a week against his grocer. The anxiety that remains is only that the system of commissions may not soon enough be extended to all corporations and especially to trade combinations. These combinations, we have reason to believe, may be fearlessly tolerated when they are subjected to legal limitation and are placed under the oversight of a board of commissioners, with power to enforce the laws, to investigate their doings, and to make all their contracts as public as the doings and contracts of railroad and gas companies.

The work of Massachusetts in this direction is in no sense a palliative, as the socialist is fond of calling every remedial attack on the existing system. A palliative counteracts certain effects without removing the cause; but Massachusetts destroys at the outset the cause of the monopoly evil. This avoids at one extreme the tendency toward anarchism, and at the other every taint of social industrialism. There is no general surrender of the liberty of the citizen to the state, except so far as it follows from the state's maintenance of some of the natural monopolies; and this more than pays for the slight sacrifice. The difference between state supervision by administrative officers and nationalization is not vast when we think of the people in their relationship to the corporations; but the difference is radical and all important when we think of the people in their relationship to the state. No one who has lived under these institutions of Massachusetts and understands their nature and administration need at all sympathize with Professor James's plea for municipal ownership of gas works, or with the incipient socialism of Professor Ely and his school. The people of Massachusetts have cause to regard these plans as unnecessary, and as unwarrantable restrictions of the citizens' liberty by the state. It is not merely a question of whether the state can operate a branch of industry with more economy than private individuals. If this is all that there is to the question, it is distribution, instead of transportation and the natural monopolies of production, that first needs attention, and the state should sell milk, in order that three or four milk peddlers might be stopped from peddling milk on one city block. If this were nothing but a question of mathematical economics, there would be no room for a protest against the delivery of the people into the power of an industrial despot or a bureaucratic cuttlefish. We are not obliged to choose between social industrialism and unrestrained private monopoly.

The oversight of corporations and natural monopolies by Massachusetts brings with it a good not generally thought of. Though a person is allowed to have justice from a court within

its criminal jurisdiction without cost to himself, he is denied free justice within its civil jurisdiction. Civil justice is not obtainable from the courts by the rich and the poor with equal freedom; the court guarantees justice only to those who can pay for it. Since the boards of commissioners have come into being, they have, by their action and by the menace of their existence, dispensed a vast amount of justice without expense to those who have received it. As the railroad commissioners, in their report for 1884, said of the residents of Massachusetts and the work of the board :

The humblest of her people may find, without delay and without cost, redress against the most powerful class of her corporations. . . . .

In such matters an appeal to the board takes the place of a long-continued suit against a powerful corporation, to be followed through all the courts and to be contested on technical points by skilled counsel, resulting in great expense and perhaps in a nominal fine. The cheap and speedy remedy of a hearing by the board is better for both parties and relieves the complainants from the sense of wrong which is often more weighty than the wrong itself.

In this work of the state of Massachusetts, an aggrieved person need pay no burdensome fees ; he is subjected to no long delays ; he cannot lose his case by an error in practice, or by the turning of a lawyer's technicality.

The general conclusion warranted, then, is that, by extending the sphere of the state in the way of regulation, inspection and publication of facts, and in maintaining at least the natural monopolies, the evils arising from corporations and from the private ownership of the means of production and transportation may be prevented by discretionary administrative officers. The problem of these evils, to which many writers are giving extreme or visionary answers, has been substantially solved by the political experience of Massachusetts. In response to the alarm felt at the private ownership of railroads or gas works, and the fault found with their uneconomic competition, the people of Massachusetts have made legal monopolies of gas and railroad companies and, so far as a state's jurisdiction goes, have disposed of all reasonable public concern about their manage-

ment. The great fear of the natural monopolies is entirely dispelled in this state, though the monopoly feature is protected. It only remains for the state to pursue what is now its well established policy, to include within it the small remnant of the natural monopolies not now fully included, and to extend this policy to all corporations and trade combinations. When that shall be done, the trust, as is now the case with the railroad and the gas company, may have a very harmless appearance. Those who advocate the remedy of state ownership may be compared to the man who protects himself against a boy with a snowball by killing the boy. The social industrialism is no more necessary than the homicide is. There are two parties who advance reasons for state ownership. The average untrained thinker aims only to do away with the excesses of private and monopolistic power; the economist is thinking mainly of the waste of capital, the inflation of capital stock and the irresponsible private management. Massachusetts returns answer to both of these parties. The economist has not yet proved that a public monopoly can be operated more economically than a private monopoly that is protected and regulated by the state. Professor Hadley, in the *POLITICAL SCIENCE QUARTERLY* for December, 1888, goes farther and says that there is no economic advantage as against private monopolies that are not so protected and regulated.

A people among whom public opinion shall have the force of law without legislative enactment or judicial authority has been dreamed of as possessing an ideal state; and yet Massachusetts has entered into the domain of this kind of government and is enjoying an appreciable amount of it. Socialism and anarchy may here find their compromise. When we examine the character of the present government of this state, we find that the principles of the common law are substantially all formulated, and that the chief business of the courts is the application of these principles to cases and the holding of negligent and reluctant persons to their legal duties and responsibilities by menacing them with the courts' power. As to the statute law, the criminal portion is about complete, as it ought to be after



creating nearly 1,000 crimes ; the civil portion is continuing to receive such additions as the evolution of conditions demands, and, no doubt, more than are needed, while various departments of laws are undergoing revision and codification to be placed in the charge of administrative officers. It is desired to diminish the activity of the legislature, not that the power of the state may be limited, as a learned writer infers, but that it may be diverted from legislation into administration.

The other states of the Union are following the lead of Massachusetts in this course, though most of them must lag far behind. It is not easy for a corporation-ridden state, like Pennsylvania, to enter this field of action, nor for such a state as South Carolina, half of whose population ten years of age and over is illiterate. But, after all, the trend of the civilization of the United States is toward the conditions which make possible the kind of government that is our theme. It is required that a large body of the people of the state shall be intelligent and educated ; that they shall be devoted to reading and discussion ; that associated efforts shall be habitual and frequent ; that population shall be considerably dense ; and that resentment against wrong and whatever limits the common welfare shall be quick and energetic. Hence it is that in Massachusetts wealthy corporations are the servants not the masters of the people, and that industry is moulded to fit the popular welfare. Competing gas works cannot be set up nor can a railroad be paralleled. The total property and assets of the New York and New England Railroad Company amount to nearly \$40,000,000 ; but for a grievance against that company that falls within the jurisdiction of the railroad commissioners, there is no resident of Massachusetts too humble to get redress, if he can command four cents with which to pay for the paper and postage of a letter.

GEORGE K. HOLMES.

## THE TAXATION OF CORPORATIONS. II.

IN the preceding essay<sup>1</sup> we traced the history and actual condition of the corporation tax in the United States. The whole subject was shown to be involved in almost inextricable confusion, amid which, however, some thirteen different bases of levying the tax might be distinguished. These, it will be remembered, were the value of the property, cost of the property, capital stock at par value, capital stock at market value, capital stock plus bonded debt, capital stock plus total debt, loans, business, gross earnings, dividends, capital stock according to dividends, net earnings and franchise. In the attempt to analyze these various methods it may be well to begin with the franchise, on account of its obscurity as well as of its importance.

### IV. *The Franchise Tax.*

We are confronted at the outset by the question: what is a franchise? The matter has been brought squarely before the public by the provisions of the California constitution of 1879, and by recent tax laws of states which, like New Jersey, Illinois, North Carolina and Tennessee, prescribe that franchises of corporations shall be separately assessed.<sup>2</sup> Before we can discuss the franchise tax, we must attempt to ascertain in what a franchise actually consists.

Blackstone defines a franchise as "a royal privilege or branch of the King's prerogative subsisting in the hands of a subject." But this does not teach us much. It is too vague for our purposes. The Supreme Court of the United States has given this definition:

<sup>1</sup> POLITICAL SCIENCE QUARTERLY, V, 269 (June, 1890).

<sup>2</sup> In addition to these laws, the courts have held franchises to be taxable in *St. Louis & N. O. R. R. Co. v. R. R. Co.*, 76 Ill. 561; *West River Bridge Co. v. Dix*, 6 Howard, 529; *First Bank v. Fenno*, 8 Wallace, 547. Cf. 37 N.Y. 367.



A franchise is a right, privilege or power of public concern which ought not to be exercised by private individuals at their mere will and pleasure, but which should be reserved for public control and administration, either by the government directly or by public agents acting under such conditions and regulations as the government may impose in the public interest and for the public security.<sup>1</sup>

This again is somewhat too narrow, since it emphasizes unduly the element of public control and public interest. These are indeed very desirable adjuncts, but they scarcely seem to be indispensable parts of the conception. I should suggest as a tentative preliminary definition, that a franchise in the wider sense is a "right conferred by government of conducting an occupation either in a particular way or accompanied with particular privileges." The motive may be either public welfare or, as has frequently happened, public revenue. This can be clearly seen by tracing the historical development of the franchise.

One of the chief sources of royal income in mediæval Europe consisted in the so-called "fines for licenses, concessions and franchises." These were simply payments for all kinds of special privileges granted to individuals or associations. The object of the payment might be to secure the general favor of the crown, to retain or to quit office, to obtain the right of exporting commodities, to conduct some business in a particular way, to obtain special jurisdictional privileges, to possess the right of *firma burgi*, and so on.<sup>2</sup> A most common instance can be found in the trading privileges of the guilds, granted chiefly for the sake of the accruing emoluments. Similar to these mediæval concessions are the modern licenses, especially in our Southern commonwealths. The licenses or privileges are conferred on individuals and corporations alike, and the reason in most cases is of a purely fiscal nature. What are called franchise taxes elsewhere are known simply as privilege or occupation taxes in the South. A franchise, therefore, of an individual

<sup>1</sup> *California vs. Southern Pacific R. R. Co.*, 127 U.S. 40.

<sup>2</sup> A characteristic example of a fine or franchise hard to classify is this: The wife of Hugo de Neville paid the king two hundred hens eo quod possit jacere una nocte cum domino suo (who happened to be in prison). *Rotuli Finium* 6; quoted in *Madox, History of the Exchequer*, I, 471.

a corporation is simply a privilege. It is something over and above the value of the property, and is in a measure analogous to the "good will" of a firm. It is the indefinite something which gives vitality to the corporation and which makes its business worth having.

Franchises, indeed, vary widely in value. In some cases there is practically no difference between the business of a corporation and that of an individual, except the limited liability of the former. Such is the case in most manufacturing corporations. But in other classes of cases the corporate franchise carries with it important privileges, such as the right of eminent domain or expropriation, which are not usually conferred upon simple individuals. This difference in the value of the franchise is recognized by the laws of several Commonwealths which, as we know, impose on transportation companies a separate tax in addition to the general corporate franchise tax. But the point to be noticed is that these privileges are not necessarily restricted to corporations. An unincorporated company or association may possess this particular privilege by law, and yet its privilege is not a franchise in the sense in which the jurists use the term. If, then, we attach this meaning to a franchise, the term cannot be confined to corporations. But if we use franchise in the sense of a privilege of juristic personality and limited liability only, the conception of corporate franchise becomes unduly restricted. In whatever way we look at it, a franchise cannot be more closely defined at this stage than simply as a privilege of conducting business in a particular way. But the nature of the franchise is everywhere the same. The closest analysis can disclose variations only in accidents, not in essence. A franchise always remains a franchise, however much it may vary in value.

A more difficult question arises when an attempt is made to measure the franchise of a corporation. We have seen that there are not less than thirteen separate methods of taxing corporations and that each of these methods, with one exception, is declared to involve a franchise tax. There are yet other methods of measuring franchise, such as the value of the capi-

tal stock less the value of the property, the value of the stock less the value of the tangible property, the value of the stock less the value of the realty, the value of the stock and bonds less each or all of these items, *etc.*, *etc.* In other words there is a total lack of uniformity. Each commonwealth measures the franchise of its corporations in its own way. And it frequently happens that the same commonwealth measures the franchises of different corporations in different ways. There is an utter absence of any common standard of measurement. Capital stock, stock minus property, stock minus realty, bonded debt, business, gross earnings, dividends, profits, *etc.*, are each declared to be the value of the franchise. The result is hopeless confusion. It would be useless to examine the methods of all the states. A single example—that of New Jersey—will suffice.

The state board of assessors of New Jersey have published since 1884 several bulky volumes in which they discuss the details of corporate assessment. In the case of railroads they have adopted the following plan.<sup>1</sup> The market value of the stock is added to the market value of the debt. From this aggregate the total value of the tangible corporate property is deducted. The remainder is declared to be the “adventitious value of the entire road, its privileges included.” The board then takes sixty per cent of this value and declares the result to be the value of the franchise. To this franchise value the board then adds the value of the real and tangible property, known as the “abstract value” of the road. The result is what is termed the entire value of the railway for purposes of taxation. But this is not all. For if the value of the tangible property exceeds the value of the stock and debt, then the board declares the franchise to be twenty per cent of the gross earnings. It will be readily perceived that this measurement of a franchise, which may give a result less than nothing, is rather awkward. And the courts of New Jersey have indeed overturned this portion of the assessors’ standard by pronouncing the estimate

<sup>1</sup> Report of the State Board of Assessors of New Jersey, 1884, p. 26; 1885, p. 11; 1886, p. 28; 1888, p. 6.

based on gross earnings unconstitutional.<sup>1</sup> But the main element in the method of valuation was upheld on the easy-going principle that no substantial injustice was done. It is this absence of "substantial injustice" to which is due the chaotic condition of franchise taxation in this country to-day.

In Illinois and California the method of taxing franchises is similar to that of New Jersey. In Illinois the board of equalization adds the cash value of the stock to that of the debt (excluding current debt), and declares the result to be the fair cash value of the capital stock including the franchise. From this the board deducts the equalized value of all the tangible property. The remainder is declared to be the value of the capital stock and franchise subject to taxation. This method was upheld by the Supreme Court of the United States as being "probably as fair as any other."<sup>2</sup> In California the value of the franchise is determined by subtracting from the actual value of the capital stock the value of all the items of property.<sup>3</sup> In the other states the determination of franchise is generally fixed by statute, but the variety of methods is infinite.

The meaning of "franchise tax" is thus something utterly indefinite. What is called a franchise tax in one state may be absolutely unlike the franchise tax in the adjoining state. The only course open for us, therefore, is to discuss the principles underlying corporate taxation, whether the tax be called technically a franchise tax or not. But before proceeding to this there still remain a few points for examination.

What is the real significance of the franchise tax? Why is it desirable that such a hard and fast line should be drawn between the property tax and the franchise tax? What is the meaning of the distinction?

The answer is very plain. In the first place, according to

<sup>1</sup> *Case of Railroad Tax Law*, N.J. Court of Errors and Appeals. Decided May 1886. The case may be found in full in the third annual report of the state board of assessors, 1886, pp. 79-173.

<sup>2</sup> *State Railroad Tax Cases*, 2 Otto, 575.

<sup>3</sup> Approved in *Spring Valley Water Works vs. Schottler*, 62 Cal. 69, 118; *Burke vs. Badlam*, 57 Cal. 594; *San José County vs. January*, 57 Cal. 614.

the constitutions of several of the states the taxes on property must be uniform. If, however, the corporation tax is held to be a franchise tax, then there is no necessity of such uniformity between the tax on individuals and that on corporations. Secondly, according to the principles of our property tax, deductions are allowed for certain classes of exempt or extra-territorial property. If the tax is a franchise tax, such exemptions cannot be claimed. Finally, if the tax is a franchise tax, many of the objections to double taxation would be removed, as we shall see in the succeeding essay. Every commonwealth imposing a franchise tax could, for instance, assess the entire capital of a corporation, although only a very small portion might be located or employed within the state. We can hence readily understand the persistence with which the corporations seek to uphold the distinction and to have the imposition declared not a franchise but a property tax.

The question has arisen almost exclusively in connection with the taxation of capital stock or of deposits. In the case of deposits of savings banks the decisions are almost uniform that the tax is one on the franchise and not on the property.<sup>1</sup> Among the few commonwealths that tax such deposits, Connecticut, Maine, Maryland and Massachusetts accept this view. There is no necessary relation between the amount of the deposits and the extent of the property. The tax is therefore valid even if the deposits are invested in United States securities. Only one commonwealth, New Hampshire, has held out against the general tendency and pronounced the tax on deposits to be a property tax.<sup>2</sup> In the case of capital stock the matter is more complicated and the decisions are more divergent. That capital stock is in one sense property will of course be denied by no one. But the question whether the tax on capital stock is tantamount to a tax on general property is a different one. In

<sup>1</sup> Maryland *vs.* Central Savings Bank, 72 Md. 92; Coite *vs.* Society for Savings, 32 Conn. 173, affirmed in 6 Wall. 594; Provident Institution *vs.* Massachusetts, 8 Wall. 611. See also Commonwealth *vs.* Savings Bank, 123 Mass. 493; Jones *vs.* Savings Bank, 66 Me. 242.

<sup>2</sup> Bartlett *vs.* Carter, 59 N.H. 105.

several commonwealths it has been held that capital stock practically represents the property, and that the two are interchangeable terms to all intents and purposes.<sup>1</sup> But as regards simply the tax on capital stock in general, other commonwealths have decided, and the federal courts have affirmed the decision, that it is not a tax on the property. Thus it has been held that the Delaware railroad tax of one quarter of one per cent on the actual cash value of the capital stock is not a tax on the property or on the shares of individuals, but a tax on the corporation, measured by a certain percentage on the value of its shares.<sup>2</sup> In like manner the Massachusetts taxes on the whole value of the corporate shares and on the capital stock in excess of the value of the real estate and machinery have been pronounced taxes on the franchise and not on the property.<sup>3</sup> On the other hand the Connecticut courts have held that the tax on capital stock plus indebtedness is not a tax on franchise but on property.<sup>4</sup>

In the case of capital stock as measured by dividends, it is remarkable that the courts of Pennsylvania and New York have arrived at diametrically opposite conclusions. In Pennsylvania a long series of cases has consistently maintained the doctrine that the tax is one on property.<sup>5</sup> The court has endeavored to lay down this rule :

The test whether the tax in any given case is a franchise as distinguished from a property tax, would seem to be that a tax according to a valuation is a tax on property, whereas a tax imposed according to nominal value or measured by some standard of mere calculation—as contrasted with valuation—fixed by the law itself may be a franchise tax.<sup>6</sup>

<sup>1</sup> *Jones vs. Davis*, 3 Ohio, 474; *Burke vs. Badlam*, 57 Cal. 594; *New Orleans vs. Canal Co.*, 29 La. A. R. 851; *Whitney vs. Madison*, 23 Ind. 331; *County Commissioners vs. National Bank*, 48 Md. 117.

<sup>2</sup> *The Delaware Railroad Tax Case*, 18 Wall. 206.

<sup>3</sup> *Hamilton Co. vs. Massachusetts*, 6 Wall. 632, *Commonwealth vs. Hamilton Manufacturing Co.*, 94 Mass. 298; *Manufacturers' Insurance Co. vs. Loud*, 99 Mass. 146; *Portland Bank vs. Apthorp*, 12 Mass. 252, decided in 1815, and the basis of all subsequent decisions.

<sup>4</sup> *Nichols vs. Railroad Co.*, 42 Conn. 103.

<sup>5</sup> *Fox's Appeal*, 112 Pa. 359; *Commonwealth vs. Standard Oil Co.*, 101 Pa. 119; *Phoenix Iron Co. vs. Commonwealth*, 59 Pa. 104; *Catawissa Appeal*, 78 Pa. 59.

<sup>6</sup> 101 Pa. 127.

This test, however, seems to be of very dubious applicability. The New York courts, on the other hand, have held the tax on capital stock to be a franchise and not a property tax.<sup>1</sup> The case was carried in last instance to the federal court. Of course the fact that the statutes of Massachusetts and New York expressly declare the tax to be a franchise tax, is of no weight ; for it can justly be contended that no importance should attach to mere nomenclature. But the United States Supreme Court had already shown the tendency of its thought in the Massachusetts and Delaware decisions just cited. Moreover, in a subsequent case, the court expressly said, although indeed *obiter*, that the New York tax was "a franchise tax in the nature of an income tax."<sup>2</sup> Finally, in a very recent case, the tax has been definitely pronounced a franchise and not a property tax. The court uses the following language :<sup>3</sup>

The tax is not upon the capital stock nor upon any bonds of the United States composing a part of that stock. . . . Reference is made to its capital stock and dividends only for the purpose of determining the amount of the tax to be exacted each year.

While we may agree with this conclusion, serious exception must be taken to some of the grounds of the decision. The court says :

By the term "corporate franchise" . . . as here used, we understand is meant . . . the right or privilege given by the state to two or more persons of being a corporation, that is, of doing business in a corporate capacity, and not the privilege or franchise, which, when incorporated, the company may exercise.

That this is incorrect is clear from two facts. In the first place, New York already has a tax (at the rate of one-eighth of one per cent upon the amount of capital stock) which is paid by every corporation for the privilege of being a corporation. This tax is known as the state tax "on privilege of organization." A

<sup>1</sup> *People vs. Home Insurance Co.*, 92 N. Y. 328.

<sup>2</sup> Or, as it is said in another place, "a tax upon its franchise based upon its income." *Mercantile Bank vs. New York*, 121 U. S. 158, 160.

<sup>3</sup> *Home Insurance Co. vs. State of New York*, 10 Supreme Court Reporter, 593.

similar tax exists, as we have seen in the preceding essay,<sup>1</sup> in eight other states. I designated it the "tax on corporation charters" for the express purpose of avoiding the confusion between this and the corporation taxes properly so-called. And I called attention to the confusion due to the action of Connecticut, which calls this tax a "tax on corporate franchise," although in reality it is like the organization tax and not like the franchise tax in other commonwealths. We saw further that several states besides New York had an organization tax *in addition to* the franchise tax; from which it clearly results that the organization tax is paid for the privilege of being a corporation, and that the franchise tax is paid for the privilege which the corporation may exercise after it has obtained corporate rights. There would be no sense in levying two entirely distinct taxes for the same purpose. But secondly, the New York law states that the tax shall be paid by every "corporation, joint stock company or association" as a tax upon its corporate franchise or business." Now manifestly the tax cannot be a tax on the privilege of being a corporation; for associations and joint stock companies do not possess this privilege. So far as they are concerned, the tax must certainly be a tax on conducting the business. But if the tax on the unincorporated companies be a tax on the business, how can it be said that the identical tax on the incorporated companies is a tax on the privilege of incorporation? The corporation must also conduct its business, just like the unincorporated company. To exempt the corporation from a tax on conducting its business, while assessing the unincorporated associations, would be rank injustice. It must be admitted, then, that the only way to reconcile the simultaneous and identical taxation of corporations and of other associations is to regard the tax as paid in each case for the privilege of conducting the business. Since the taxes are the same, the privileges are evidently considered the same. For additional privileges an additional incorporation tax is paid by the corporations only.

<sup>1</sup> POLITICAL SCIENCE QUARTERLY, V, 305 (June, 1890).



All these considerations, however, are of little importance; for the decision can be defended on grounds totally neglected by the court. It may be granted, and in fact it is difficult to dispute the contention, that the tax is in one sense a tax on capital stock. Nevertheless it does not follow that the tax is a property and not a franchise tax. For from the economic point of view capital stock is not necessarily identical with the property of a corporation. In the first place there is the question of the market or par value of the stock. Some of the commonwealths, as we know, tax corporations on the amount, *i.e.* the par value, of the capital stock. Yet manifestly, where the market value of the stock may be double or half the par value, it cannot be maintained that the latter is identical with or an index to the value of the property. In no sense can capital stock at its par value be declared equivalent to the whole property. But even if we take the market value of the stock, we are not in a much better position. For many of our corporations, especially railroads, are created on the proceeds of the bonds. In such cases, although the property may be very great, the profits are devoted mainly to meeting the interest on the bonded debt. There may be no dividends, and the value of the stock therefore may be very slight. Yet the property which produces these profits may be enormous. Evidently the capital stock and the whole property are not identical. But we may go still farther. Even in the case of corporations which have no bonded debt, if the property does not pay good dividends, the capital stock even at its market value is no index of the property. A model-dwellings company may have property worth a million dollars; yet if it is so managed as to pay no dividends, the stock will sell in the market for a very small sum. The value of this depreciated stock is evidently not the same as that of the company's real property. They are not interchangeable terms. Thus from whatever point of view we regard it, capital stock economically speaking is not identical with the corporate property. A tax on capital stock is not a tax on the whole property.

In reality, the entire treatment of a franchise tax is based largely on a legal fiction. The conception is legal, not eco-

nomic. It was devised by our legislatures and extended by our courts simply to evade the evil results of our general property tax.<sup>1</sup> Except in so far as corporations may be righteously made to pay a lump sum for the charter, there is no reason why they should be put on a different footing from joint stock companies or other associations. The ability of an association to pay, that is, its earning power, is not changed a whit by the simple fact of incorporation. The privilege of limited liability, however important it may be to the individual stockholders and however great the amount that may be demanded for the privilege as a condition precedent to organization, does not alter the taxable capacity of the association after it has once become a corporation. If the corporate franchise itself constituted the justification of a tax, how would it then be possible to tax unincorporated companies in the same way? And yet to exempt the latter would clearly constitute a glaring inequality.

There remain finally the questions as to what franchises are taxable and to what extent. As to the latter, it may be asserted that the taxation of corporate franchises has no limitation except the discretion of the taxing power.<sup>2</sup> The single qualification to this is the principle that no commonwealth can impose a franchise tax that may in any way, either directly or indirectly, interfere with or hamper interstate commerce.<sup>3</sup> As to the franchises that are taxable, it is a principle of the American polity that no state can impose a franchise tax on corporations chartered by the United States.<sup>4</sup> Even national banks cannot be subjected to license or privilege taxes.<sup>5</sup> Further than this

<sup>1</sup> This is apparent from the New York law of 1806, chap. 761, which declared the privileges and franchises of savings banks to be personal property, and taxable to an amount not exceeding the gross sum of the surplus earned. In *Monroe County Savings Bank vs. City of Rochester*, 37 N. Y. 365, the law was upheld, although the bank had a portion of its property invested in United States bonds. The court held that since the tax was upon franchise it was unimportant in what manner the property of the corporation was invested. "The reference to property is made only to ascertain the value of the thing assessed."

<sup>2</sup> *California vs. Southern Pacific R. R. Co.*, 127 U. S. 41; *Delaware Railroad Tax Case*, 18 Wall. 231.

<sup>3</sup> *Philadelphia and Southern Mail Steamship Co. vs. Pennsylvania*, 132 U. S. 345.

<sup>4</sup> *California vs. Southern Pacific R. R. Co.*, 127 U. S. 40.

<sup>5</sup> *Mayor vs. National Bank of Macon*, 59 Ga. 648; *City of Carthage vs. National*

it is a commonly accepted doctrine that no state can impose a franchise tax on foreign corporations. The whole question of the taxation of foreign as opposed to domestic corporations will be fully discussed in the succeeding essay. It may be succinctly stated here, however, that the principles of interstate comity are opposed to the franchise tax on foreign corporations, for the reason that the corporate franchise has no existence apart from the laws of the state which created it. But it is significant that Massachusetts has upheld the opposite doctrine.<sup>1</sup> In New York this has led to a curious legal quibble. The act of 1881 imposed the capital stock tax as a tax "on the corporate franchise or business." It was upheld as to foreign corporations as being a tax not on the franchise (which would be considered inadmissible) but on the business transacted in the state.<sup>2</sup> The court however says: "Whether the tax upon a domestic corporation be called a tax upon franchise or upon business is wholly unimportant." We may go farther and say that from the economic standpoint it is wholly immaterial whether the tax upon *any* corporation be called a tax on franchise or a tax on business. In an economic sense the franchise tax means nothing at all. It is so utterly indefinite that it defies exact analysis. To the student of the science of finance it is a useless conception.

### V. *Criticism of the Principles.*

Let us therefore leave the domain of these legal quibbles and attempt to analyze the economic principles underlying the taxes actually in vogue, irrespective of the question whether they are called franchise taxes or not. It will be best to take them up in the order mentioned above.<sup>3</sup>

First, *the general property tax*, or the taxation of the corporate realty plus its visible and invisible personalty at its actual value. It will not be necessary to show the inadequacy of this

Bank of Carthage, 71 Mo. 508; National Bank of Chattanooga *vs.* Mayor, 8 Heiskell, 814. Cf. Report of the Secretary of the Treasury, 1889, p. 408.

<sup>1</sup> Attorney-General *vs.* Bay State Mining Co., 99 Mass. 148.

<sup>2</sup> People *vs.* Equitable Trust Co. of New London, Conn., 96 N. Y. 396-7.

<sup>3</sup> POLITICAL SCIENCE QUARTERLY, V, 306 (June, 1890).

method. All the actual reforms are away from this primitive plan. We have seen in a previous essay that the standard of taxation is ability to pay, and that this ability is no longer proportional to the general mass of property. The general property tax is to-day antiquated. When it is levied by the local assessors, it becomes especially unjust. Even when assessed by a separate state board it is inexact, and exhibits all the defects of the general property tax on individuals. We may conclude, with the railroad tax commission of 1879, that as a system it is open to almost every conceivable objection.<sup>1</sup>

*The cost of the property*, as a basis for taxation, is even less defensible than the value of the property. For no one would assert that the original cost of corporate property bears any necessary relation to the present value, much less to its present earning capacity. This method is so obviously unjust as to deserve no further mention.

*The capital stock at its market value.* This plan is open to several vital objections. The idea is that the market value of the stock will be practically equivalent to the value of the property, or, as it is put by some of our state courts, that the entire property of a corporation is identical with its stock.<sup>2</sup> But as I have already observed, heavily bonded corporations would in this way entirely escape taxation. In such cases—and they are the great majority—the capital stock alone would not represent the value of the property. But secondly, even in the case of corporations without any bonded debt, the tax is unjust, because it does not necessarily bear any relation to the earning capacity. If a company without bonded debt pays dividends, then indeed the value of the stock is a fair index to earning capacity. Its value would represent the capitalized earnings. But if there are no dividends, the value of the capital stock is wholly uncertain and largely speculative, depending on the manipulations of the stock exchange. It frequently happens that non-dividend-paying stock fluctuates in value from thirty

<sup>1</sup> *Taxation of Railroads and Railroad Securities*, by C. F. Adams, W. B. Williams and J. H. Oberly (1880), p. 8.

<sup>2</sup> See above, p. 447.

to fifty per cent within one year. Clearly a method of taxation which in such large classes of cases bears absolutely no proportion to the earning capacity or productiveness of the property cannot be successfully defended. We can again agree with the railroad tax commission in their conclusion that the tax on the value of the capital stock is "clumsy and devoid of scientific merit," that it "would admit of evasions in a most obvious way" and that "it is impossible of any general application."<sup>1</sup>

The New York statute which governs the taxation of corporations for exclusively local purposes requires the capital stock to be assessed "at its actual value in cash." In determining the "actual" value, the assessors are in the habit of taking the market value of the shares or, if they so prefer, the "book value," *i.e.* a value obtained by estimating the assets separately and deducting from the aggregate the total amount of the liabilities, actual or contingent. The latter method is employed when the market value of the stock is fictitious or artificially inflated.<sup>2</sup> But in principle it is open to precisely the same criticism as the other.

*The capital stock at its par value.* This method is open to all the objections of the preceding and to many more in addition. Moreover, it is peculiarly liable to evasion. Thus in New York it is a common practice for corporations to evade the organization tax of one-eighth of one per cent on the amount of the capital stock, by issuing a nominally small capital, but selling it to the stockholders at a premium of several hundred per cent. The market value of the stock is at once many times the par value. The sole recommendation of the tax is the facility of ascertainment. But this does not compensate for its obvious defects. The par value of stock is certainly no gauge either of the real worth of the property or of its earning capacity. This is perhaps the least defensible of all the methods, and merits no serious consideration.

*The capital stock plus the bonded debt at the market value,*

<sup>1</sup> Report, *etc.*, p. 7.

<sup>2</sup> Davies, *System of Taxation in New York*, p. 9; *People ex rel. Bank of the Commonwealth vs. Commissioners of Taxes*, 23 N. Y. 194.

or more logically still, *the capital stock plus the total debt*. The justification for adding to the value of the stock the value of all that the company owes, *i. e.* the funded and the unfunded debt, is the simple fact that the existence of this indebtedness makes the stock worth just so much less. The sum of the two elements is a far better index to the value of the property than the capital stock alone, for it prevents the exemption of heavily bonded companies. This method is much preferable to any that has yet been discussed. And still it is open to some objections. Owing to the complications of our interstate polity, the proceeds of the tax, in all cases where the stock and bonds of a corporation are owned outside of the commonwealth, will accrue not to the state of the owner's residence, but to the state where the corporate property is situated. Secondly, when the tax is on bonds as well as on stock it will be inadequate, because applicable only to the bonds owned by residents of the state. Both these points will be discussed more fully in the succeeding essay. Thirdly and principally, in all those cases where the corporation pays no dividends and its stock nevertheless possesses a speculative value, the tax will not necessarily bear any relation to the earning capacity or productiveness of the company, for the reasons adduced above. In short, while this method is better than the taxation of capital stock, it does not avoid all the objections that have been urged against the latter.

There remain thus only the taxes on earnings, business, dividends and profits.

*The gross earnings.* This tax was the one recommended by the railroad tax commission. It possesses many undeniable advantages. The tax is certain, easily ascertained, and not susceptible of evasion. But it has one fatal defect. It is not proportional to the real earning capacity. It takes no account of the cost, nor does it pay any regard to the expenses, which may be necessary and just. For example, when the cost of building a railroad is great, its gross earnings must be correspondingly large in order to enable its owners to realize any fair return on the investment. A tax on gross earnings does not recognize this distinction. It discriminates unfairly between companies, and



makes a line built at great expense and with great risk pay a penalty for the enterprise of its constructors. Again, a gross earnings tax takes no account of expenses. Of two corporations which have equally large gross receipts, one may be in a naturally disadvantageous position which increases unduly the cost of operation or management. Clearly its ability to pay is not so great as that of the rival company in possession of natural advantages. In short, the gross receipts tax is like the old tithe on land, the most primitive and the most unjust of all land taxes. For two pieces of land may yield the same product and yet, owing to difference in the expenses of cultivation, may bring in very different profits to the owner. The very first development in all early tax systems is to replace the tithe by a tax on the value or the profits of the property.

These defects in the proportional earnings tax are so apparent that several commonwealths, as we know, have introduced, in the case of railroads at least, the graded gross earnings tax. The rate per cent increases with the earnings. But this system of progressive or graded earnings taxation, while incontestably an improvement, removes the objection only in part ; for the graduation takes place only up to a certain point. Above all, there is absolutely no guarantee that the increase of net receipts will correspond to the increase of the gross receipts. There is no necessary connection between them. A corporation with gross receipts of five thousand dollars per mile may have actually less net receipts than one with four thousand dollars per mile. A graded earnings tax would in such a case intensify the disadvantages of the first line and augment the injustice. To tax gross earnings is an essentially slipshod method.

*The business transacted.* This tax, while closely analogous to the gross earnings tax, does not, however, possess all its advantages. The business may be large but not lucrative. An extensive business does not even mean proportionally extensive gross earnings. The business transacted is an exceedingly rough way of ascertaining the prosperity of a corporation. It affords no accurate test of profits. It fails to take account of the personal equation which may make all the difference between good and

bad management. Clearly the tax on business is but a clumsy device.

*The dividends or the capital stock according to dividends.* Economically speaking these taxes are the same. But from the legal point of view there is a decided difference, at least according to the opinion of our Supreme Court. The problem arises in connection with the subject of extraterritoriality, and it will be fully discussed in the next essay. But we are dealing here only with the economic problem. The dividends tax, it may be said, is good so far as it goes. But it does not go far enough. It is indeed true that objections have sometimes been raised which are of little weight. Thus it has been contended that this tax fails to reach the profits which are not divided but simply put into a reserve fund. Some commonwealths have even sought to obviate this supposed difficulty by providing that the tax should apply to the dividends, whether declared or merely earned and not divided. But this objection is of no importance. For even if the undivided earnings are not taxed, they go into the reserve or surplus fund. As this increases the corporate capital, it must in the long run lead to increased earnings on the larger capital. And as the surplus cannot be increased indefinitely, it will ultimately find its way to the shareholders as dividends, and thus become liable to the tax.

Another objection which might be urged is that a corporation may devote a portion of its earnings to new construction or to new equipment. This expense may be defrayed out of profits, instead of from the capital or construction fund. The dividends in such a case, it might be said, do not represent the actual earning capacity of the enterprise. But while this is true temporarily, the improvements made by the corporation necessarily enhance the value of the property and lead to ultimately increased dividends. So that in the long run a tax on dividends would still reach the corporation.

The real objection to the dividends tax is of quite a different character. The taxation of dividends is utterly inadequate when applied to those corporations which have bonded indebtedness. One corporation may have only a capital stock with



earnings or dividends of five per cent. Another corporation, with the same earnings, may have collected an identical amount of money, of which one half, however, is represented by five per cent bonds. A tax on dividends, while nominally equal, would then be actually most unequal. The one corporation would pay just twice as much as the other. This objection has been recognized, but only once, in American legislation. The United States internal revenue law of 1864 provided for a five per cent (raised from three per cent in 1862) tax, which, in the case of railroads, canals, turnpike, navigation and slackwater companies, was imposed on all *dividends*, as well as on all *coupons* or *interest* on evidences of indebtedness and on all profits carried to the account of any fund. While in the case of those companies which were not presumed to have any bonded debt, like banks, trust companies, savings institutions and insurance companies, the tax was imposed only on dividends and surplus.<sup>1</sup> The federal law, indeed, violated strict consistency in imposing a gross earnings tax also on transportation and on certain insurance companies. But the correct implication in the law was the inadequacy of a tax on dividends alone. In fact the objections to the dividends tax are closely analogous to those that we found in the capital stock tax as over against the tax on stock plus debt. It reaches only a part of the corporate earning capacity.

We thus come finally to the tax on *net earnings*, or rather on net receipts, profits or income. Net receipts form the most logical basis for corporate taxation. The tax is not unequal in its operation like the gross earnings tax. It holds out no inducement to check improvements, like the general property tax. It is just; it is simple; it is perfectly proportional to productive capacity. In short, it satisfies all the requirements of a scientific system.

There are indeed two possible objections to a tax on net receipts. One is that the accounts may be "cooked" by paying unduly large salaries to the officers; that is, the profits may be divided as nominal expenses, thereby leaving very insignificant

<sup>1</sup> Act of July 1, 1862, 37th Cong., 2d Sess., chap. 119, secs. 81, 82; extended and amplified by act of June 30, 1864, 38th Cong., 1st Sess., chap. 173, sec. 122.

net receipts or none at all. But this objection would not apply at all to the vast majority of corporations, whose stock or bonds are held by outside parties. These owners will not consent to see their dividends or interest curtailed by any practices of this nature. The danger can be real, only in respect to the few corporations in which the stock is owned entirely by the managers. But these are chiefly manufacturing corporations, which, as we know, are usually exempted from the general corporation tax. Even here, however, the danger is not very great. We hear of no complaints on this score in the American commonwealths where the net receipts tax prevails. And in Europe, where this method of taxation is well nigh universal, the objection has never been raised. It may be pronounced, thus, of little importance.

But secondly, it may be contended that the tax is impracticable in the case of great railroad corporations which, having leased lines in other states, are interested in so manipulating the traffic that the heavily mortgaged leased lines will earn little or nothing above fixed charges. Such cases are very common. The commonwealths in which such leased lines are situated, it is argued, will be robbed of the whole benefit of the tax; for the proceeds accrue to the state of the parent company. In reality, this apparent objection arises simply from a quibble about words. Of course net receipts must be strictly defined. The logical basis of corporate taxation is the total annual revenue from all sources minus all actual expenditures except interest and taxes. The reason for not deducting fixed charges, *i.e.* interest on the bonds, is the same as that which leads Connecticut to levy its railroad tax on capital plus debt, and which made the federal government tax coupons as well as dividends. Both together represent earning capacity. Although the interest on the funded debt is known by the name of fixed charges, it is in reality part of the profits which, in the absence of funded debt, would go to the shareholders as dividends. It would be suicidal so to frame the definition of net receipts as to exclude this interest on bonds. Net receipts of a corporation mean gross receipts minus actual current expenses. Any other definition would confuse the whole conception.

In several commonwealths some very dubious and in general quite arbitrary distinctions have been attempted. The Minnesota courts have held that "earnings" means only receipts from operation.<sup>1</sup> Under the New York law it has been held that "income" means gross income, and that "profits" means gross not clear profits.<sup>2</sup> But this decision was owing to some peculiarities of the statutory phraseology. From the standpoint of the science of finance we understand by "income," net income, and by "profits," net profits. So in Pennsylvania and Alabama it has been held that income, gains or net earnings means the whole product of the business, deducting nothing but expenses.<sup>3</sup> The Thurman law, indeed, which regulates the relations of the federal government to the Pacific railroads, defines net earnings in a different way, *viz.*, as the gross earnings, deducting "the necessary expenses actually paid within the year in operating the lines and keeping the same in a state of repair," and also deducting "the sums paid by them in discharge of interest on their first mortgage bonds," but "excluding all sums paid for interest on any other portion of their indebtedness."<sup>4</sup> It is evident at a glance how utterly arbitrary this is. The explanation lies not in any economic principle but in a particular legislative provision whereby the first mortgage bonds are given precedence over the government liens. The Interstate Commerce Commission makes a distinction between earnings and income, including in earnings only receipts from transportation, and designating as income the receipts from property owned but not operated. The aggregate it calls total earnings and income.<sup>5</sup> But while the separation of earnings is correct, the nomenclature is on the whole confusing. The term income

<sup>1</sup> State *vs.* Railroad Co., 30 Minn. 311.

<sup>2</sup> People *vs.* Supervisors of Niagara, 4 Hill. 20; People *vs.* Supervisors of New York, 18 Wend. 605.

<sup>3</sup> Commonwealth *vs.* Pa. Gas Coal Co., 62 Pa. 241; Board of Revenue *vs.* Gas Light Co., 64 Ala. 269. In the case of mines, "net proceeds" have been defined; Montana Code, § 1791.

<sup>4</sup> Act of May 7, 1878, 45th Cong., 2d Sess., chap. 96, sec. 1.

<sup>5</sup> Report on the Statistics of Railways in the U. S. to the Interstate Commerce Commission, 1889.

should be reserved for the conception net profits. In Virginia the net income of corporations is ascertained by "deducting from gross receipts the costs of operation, repairs and interest on indebtedness."<sup>1</sup> But this as we have seen is economically incorrect. Interest on bonds must not be deducted

If it should be desired to obtain a more exact definition of net receipts or income in the case of railroad companies, the following would be an economically sound method of proceeding: Gross receipts consist of all earnings from transportation of freight and passengers, receipts from bonds and stocks owned, rents of property and all miscellaneous receipts from ancillary business enterprises or otherwise. From these aggregate gross receipts we should deduct what are classified by the Interstate Commerce Commission as operating expenses, that is, expenses for conducting transportation, for maintenance of roadway, structures and equipment, and general expenses of management. But no deduction should be made for fixed charges, *i.e.* for taxes or for interest on the debt, nor should any deduction be allowed for the amount used in new construction, betterments, investments, new equipment or any of the expenditures that find their way into profit and loss account. The method here suggested would lead to the abolition of one of the greatest abuses of American railway management — that of putting all possible expenses into the construction account. Our railways, for example, frequently fail to charge the maintenance and repair of their rolling stock to current expenses. When the equipment has become unserviceable, new stock is bought and charged to the construction or the profit and loss account. But in the meantime the nominal earnings of the railway will seem to have been large, and the managers will have reaped whatever temporary benefit they may have desired. The taxation of net profit in the sense that I have indicated would tend to check this practice, since deductions would be allowed for maintenance, but not for new equipment. A tax on net receipts would possess not only a financial, but also a wider economic advantage.

<sup>1</sup> Va. Laws of 1883-4, chap. 450, sec. 20.

European experience all points to net earnings taxation as the best system. One country indeed still assesses corporate property in some form or other. Switzerland, as we have seen, is the only European state which has retained the mediæval system once common to all countries. The reasons, as was pointed out, are the comparative equality of conditions and the survival of the primitive villages and agricultural communities with all the circumstances of a placid and homogeneous economic life. But it is significant that many of the Swiss commonwealths in which we notice a gradual industrial development and a consequent differentiation of property, have attempted to remedy some of the obvious defects of the general property tax by supplementing it with an income tax. Thus some cantons, like Schaffhausen, Zurich, Basel, Aargau and others, tax corporations on their capital or reserve fund ; but if the net receipts exceed a certain percentage of the capital, the corporations are assessed on their income. This system resembles, although in a very slight degree, the New York and Pennsylvania systems. Other cantons again, like Bern, have abandoned the general property tax, and assess corporations only on real estate and income. Finally some cantons, like St. Gallen and Neuenburg, tax corporations directly only on their income. Thus even in Switzerland, with its lurking fondness for mediæval customs, we see that the tendency is almost everywhere away from the taxation of corporate property. In the other European states this tendency has passed into accomplished fact.

In England all corporations are held to be "persons" within schedule D of the income tax. Consequently they pay a tax on their net annual profits or gains. A series of important cases has elaborated the principles that should determine the exact nature of net profits.<sup>1</sup> The rules laid down are analogous to those described in my definition of net receipts just given. The tax, moreover, is paid before the dividends are declared. Railroads are also subject to the special passenger duty of five per cent on receipts from passengers. But this is merely a survival of the old tax on stage coaches.

<sup>1</sup> Ellis, *A Guide to the Income Tax Acts*, 2d ed., pp. 80, 92-101.

In France all corporations pay a tax on net profits in the shape of a three per cent tax on dividends, coupons and profits, known as the tax "*sur le revenu des valeurs mobilières*." The tax is also applicable to joint stock companies and commercial enterprises.<sup>1</sup> Mutual insurance companies and similar associations have been exempted by judicial interpretation. Like individuals, corporations are also subject to real estate taxes and to the license taxes (*impôt des patentes*) on occupations. In the case of railroads, however, we still find a partial tax on gross receipts. The five per cent tax on gross receipts from freight, which was imposed after the Franco-Prussian war, proved to be so vexatious and so obstructive to industrial development that it was abolished a few years later.<sup>2</sup> But the old "tax on public conveyances," - a percentage on the fare, which dates from the last century, was extended in 1855 to the receipts from passengers and express traffic. In practice, however, this "public conveyance" or transportation tax<sup>3</sup> is not a direct tax on the corporations at all, but an indirect tax on passengers and on consignors of express packages; for the tax is added to the price of the ticket or receipt and is paid by the individual, not the company. The direct tax thus is still one on net earnings. Corporations also pay the indirect taxes, like the stamp tax (*droit de timbre*) and the transfer tax (*droit de transmission*) on shares and bonds. But they may and generally do commute for these by paying an annual tax of one twentieth and one fifth of one per cent respectively on the amount of their capital stock. This is simply to facilitate the administrative procedure.

In Italy corporations are taxed on their income or net earnings just like individuals, by the *imposta sui redditi della ricchezza mobile*. This "revenue of personal property," as it is called, is

<sup>1</sup> The tax is imposed on "les intérêts, dividendes, revenus et tous autres produits des actions de toute nature" of stock companies, and on "les intérêts, produits et bénéfices annuels des parts d'intérêt et commandites" of all associations, etc., without a divisible share capital. Law of June 29, 1871, art. 1. Cf. Tanqueray, *Traité théorique et pratique de l'impôt sur le revenu des valeurs mobilières*, pp. 23, 51, 143, etc.

<sup>2</sup> Levied in 1874; abolished in 1878.

<sup>3</sup> *Droit sur les voitures publiques*. Cf. Vignes, *Traité des impôts en France*, 4th ed., I, 192.



declared to consist, so far as corporations are concerned, in "all interest or dividends paid."<sup>1</sup> To make the term dividends still clearer, the law provides that "in the estimate of income are included all sums, under whatsoever title, distributed among the shareholders or added to capital, surplus or sinking fund or otherwise used in cancelling debts."<sup>2</sup> The Italian system is thus as comprehensive as the English.

In Germany the taxation of corporations varies widely in the different commonwealths.<sup>3</sup> Prussia and a few of the smaller states tax corporations for state purposes only on their realty and on their occupation (*gewerbe-steuer*). They are not taxable on income or net profits, because the shareholders are individually taxed on their income from the corporation. This point will be discussed in detail in the following essay. In all the other states, however, corporations are taxed on their income. Even in Prussia railroads have been assessed since 1853 on their net receipts. The local taxes vary exceedingly throughout the empire. But whenever corporations are taxed at all on receipts, it is on net income. Corporations were formerly exempt from the local income tax, but they are now almost universally subject to this wherever it exists.<sup>4</sup> Only in one

<sup>1</sup> Sono considerati come redditi di ricchezza mobile esistenti nello stato . . . gli interessi e dividendi pagati . . . delle compagnie commerciali, industriali e di assicurazione. Law of August 24, 1877, art. 3, b.

<sup>2</sup> Nel reddito delle società anonime ed in accomandita per azioni, compresevi le società d'assicurazione mutua od a premio fisso saranno computate indistintamente tutte le somme ripartite sotto qualsiasi titolo fra i soci e quelle portate in aumento del capitale o del fondo di riserva ed ammortizzazione, od altrimenti impiegate anche in estinzione dei debiti. *Ibid.* art. 30. Cf. in general Oronzo Quarta, *L'imposta sulla ricchezza mobile*, 2 vols. (Turin). See also Alessio, *Saggio sul sistema tributario in Italia*, I, 345; the chapters on Italy in Chailley, *L'impôt sur le revenu*; and Burkart, *Die italienische Steuer auf die Einkünfte vom beweglichen Vermögen*, in Schanz's *Finanz Archiv*, VI (1889), 30.

<sup>3</sup> For full details as to corporate taxation in each of the German states, see Antoni, *Die Steuersubjecte im Zusammenhalte mit der Durchführung der Allgemeinheit der Besteuerung nach den in Deutschland geltenden Staatssteuergesetzen*. *Finanz Archiv*, V (1888), 382-499, especially 475 *et seq.*

<sup>4</sup> This is true especially since the Prussian Communalsteuernothgesetz of 1885. See Cohn, *Finanzwissenschaft*, p. 660. Cf. also Meier, *Ueber die Frage der Communalbesteuerung* (in *Zehn Gutachten und Berichte über die Communalsteuerfrage*, veröffentlicht vom Verein für Socialpolitik), p. 104.

instance are corporations taxed on their capital stock. In the case of mutual insurance companies, the dividends which the individual receives in part return for the premium he has paid can scarcely be termed net profits. On account of the difficulty of ascertaining the exact profits, Baden has therefore levied the income tax on an assumed amount of net profits, fixed at five per cent of the capital stock.<sup>1</sup>

The net receipts tax may thus be declared applicable in theory to all corporations. The peculiar limitations which arise from the clashing of commonwealth laws will be discussed in the next paper. It has sometimes been urged that a tax on corporate property is more just than a tax on corporate earnings, because the value of a corporate security is fixed not only by its present but also by its prospective productiveness. This is a specious objection. The answer is that under a system of earnings taxation the future product will be taxed when it ultimately appears. If productiveness be accepted at all as the standard of capacity, — and this is tacitly assumed in the above objection, — then the taxation of the product as it appears is the most logical and defensible method. But consideration for the individual producer makes it necessary to regard net, not gross product. If, therefore, any one principle be accepted as the basis of the general corporation tax, it should be net profits, and not gross earnings or property.

#### VI. *Practical Reforms.*

While the taxation of net receipts is without doubt the best system, it brings us face to face with the facts of our constitutional law. These, in certain cases, interpose serious difficulties. A commonwealth tax on the gross earnings of transportation companies is held to be unconstitutional, because it involves an interference with interstate transportation. In 1872, indeed, while a state tax on tonnage was pronounced unconstitutional because imposed practically on interstate commerce,<sup>2</sup> a tax on

<sup>1</sup> Lewald, Die direkten Steuern in Baden. *Finanz Archiv*, III, 307.

<sup>2</sup> State Freight Tax Case, 15 Wallace, 232.



the gross receipts of transportation companies was sustained on the ground that the tax was laid upon a fund which had already become property.<sup>1</sup> But these refinements have lately been swept away and the gross earnings tax, in so far as it touches foreign or interstate commerce, has now been declared unconstitutional.<sup>2</sup> It is very probable that the gross earnings even of railroads entirely within a state, if derived from business coming from or going to another state, fall equally within the constitutional prohibition, according to its latest interpretation by the Supreme Court. A gross receipts tax on transportation companies may therefore be utterly discarded, as both economically unsound and legally invalid. Its continued existence in a few commonwealths can be explained only by the fact that the taxation is light, and the corporations therefore prefer the certainties of the present illegal system to the uncertain future of a constitutional but perhaps more burdensome system.

The question as to net profits or income, however, is much more doubtful. If a gross receipts tax is unconstitutional, will not a net receipts tax be equally so? An *obiter dictum* of the court might lead us to suppose that there is a legal distinction between a net income and a net receipts tax, and that the former as applied to transportation companies is permissible.<sup>3</sup> And in the recent memorandum of a new system of taxation published by a member of the revenue commission of Pennsylvania, it is assumed that such a tax does not fall within the scope of the recent decisions, but is perfectly constitutional.<sup>4</sup> This would be a result much to be desired. But it must be

<sup>1</sup> Railway Gross Receipts Case, 15 Wallace, 284.

<sup>2</sup> *Fargo vs. Stevens*, 121 U. S. 230; *Philadelphia and Southern Mail Steamship Co. vs. Pennsylvania*, 122 U. S. 326. Applied to telegraph companies in *Ratterman vs. Western Union Telegraph Co.*, 127 U. S. 44. A license tax on telegraph companies is invalid for the same reason. *Leloup vs. Port of Mobile*, 127 U. S. 640. *Cf. Telegraph Co. vs. Texas*, 105 U. S. 460; *Telegraph Co. vs. Massachusetts*, 128 U. S. 39. Applied to sleeping car companies in 117 U. S. 34.

<sup>3</sup> The court holds that the gross receipts tax is unconstitutional because it is a tax not on *income* but on *receipts*, *i.e.* on transportation. Query, would not a tax on income then be constitutional? See 122 U. S. 345.

<sup>4</sup> John A. Wright, Memorandum of a System of Taxation, submitted to the commission for revision of the revenue laws of Pennsylvania (1890), pp. 10, 13.

confessed that the final opinion of the court is problematical, in view of its extreme sensitiveness to any interference with interstate commerce.<sup>1</sup>

If the decision of the court should be adverse, only one course would remain open in regard to transportation companies. If a tax on net receipts is the best tax, and if a state tax on net receipts be declared illegal, a national net receipts tax might be suggested. The federal law might impose a tax on net receipts, providing for the levy, if necessary, by the commonwealth officials themselves, and apportioning the proceeds according to the mileage in each state. Such a plan would be free from all objections of an economic nature and would avoid many of the difficulties connected with double taxation. The principle would be analogous to that of the English "grants in aid." But however desirable such a plan would be, it is doubtful whether the national government has the constitutional right to levy a tax for such purposes. Entirely apart from the question of power, moreover, is the question of realization. And it must be confessed that such a federal tax on net earnings is wholly improbable, at all events in the near future. As we are seeking not only the ideal, but also the practicable, some other plan must be devised.

The only other method of taxing transportation companies which at all deserves approbation is that employed in Connecticut, *vis.*, laying the tax on the market value of the stock plus the indebtedness, in the proportion that the mileage within the state bears to the total mileage. This would be applicable to railway, telegraph, telephone and express companies, but of course not to ocean or coastwise steamship companies, which have no mileage within any state. Connecticut, as we know, applies the tax only to railroads. Such a tax would be certain, and simple of enforcement, and would attain justice as among the separate states. But, as we have seen, it would not attain perfect justice as among the separate corporations. Yet it is

<sup>1</sup> "In imposing [franchise] taxes care should be taken not to interfere with or hamper directly or by *indirection* interstate or foreign commerce." 122 U. S. 345. Cf. 127 U. S. 648.

so far superior to all the other methods which have been discussed, that it can be strongly recommended as the type to which the commonwealths should conform their taxation of transportation companies, if the net receipts tax be pronounced unconstitutional. As to all other corporations, however, the logical and entirely practicable system would be to tax them on their net revenue according to carefully defined rules.

Thus far we have discussed only the state tax on corporations. But the lesser governmental divisions have also their claims to urge, especially in modern times, when local needs outweigh so heavily those of the states. Some commonwealths, as we have seen, exempt corporations entirely from local taxation; while a few others redistribute to the local districts a portion of the state corporation taxes. But in the large majority of commonwealths corporations are still locally taxable. This is perfectly right, even if the particular method of taxation is at fault, and for this reason: There are two separate principles in corporate as well as in individual taxation. The old justification of taxation as the price of protection can no longer be applied to the general state taxes. The science of finance has advanced beyond that standpoint. The obligation to pay taxes rests to-day on a far broader basis, which it is not our purpose, however, to discuss in this place. But as regards local taxation, there is still some truth in the old doctrine. The real property of corporations, as of individuals, is benefited in a peculiar sense by the action of the local administration. The security afforded by the public lighting and the police, the indirect results of good schools and local courts, the advantages conferred by good sewers and good roads, — enure in a special manner to the benefit of the visible property situated in the neighborhood. And as the care of these matters is entirely within the competence of the local authority, it is only fair that the property directly benefited, and which is the chief cause of the local expenditures, should help to sustain the burden. This should be entirely without reference to the question whether the property also pays state taxes, or whether

it yields any profits to its owner. The test here is not the income, but the expenses occasioned to the local district.

Hence while the real basis of state taxation of corporations is net receipts, all corporations should be made to pay a local tax on their real estate, which is so peculiarly benefited by and productive of local expenditures. The first principle in the taxation of corporations is ability to pay, and this is best recognized by the general tax on net receipts. The subordinate but equally necessary principle of corporate taxation is the benefit derived from or the expense occasioned to the local administration; and this is best measured by the value of the real property. The principle of benefit is not the same as the principle of ability. The reasons for taxation are different, and therefore the forms of taxation should be different. The basis of local taxation, again, should be realty and not general property, for two reasons: first, because it is mainly the realty which comes into direct relations with the purely local functions; second, because the attempt to tax personalty would immediately lead again to the uncertainty and confusion from which it has been the policy of all recent reforms to extricate us.

The New York system, therefore, is unwise for a double reason: first, because it imposes a state tax on corporate real estate; and second, because it further imposes a local tax on the total corporate property. The Minnesota or the Connecticut system, as applied to railroads, is unwise because it imposes no local tax at all. The Washington system is unwise because it imposes only a single state tax which is in part redistributed to the local divisions. All these methods err because they fail to analyze the deeper principles that underlie corporate taxation.

The plan of levying a general state tax and distributing a part of the proceeds to the counties or municipalities contains a fruitful idea. The system is already in vogue in an incomplete way in a few commonwealths.<sup>1</sup> But it is susceptible of great expansion and may thus be of considerable value in solving the vexed question of purely local taxation. In so far as corporations are

<sup>1</sup> For details, see my monograph on *Finance Statistics of the American Commonwealths*, pp. 40, 41.

concerned, however, such a plan of redistribution is entirely premature. Until the proceeds of the state corporation tax are sufficient to enable the commonwealth to dispense entirely with the state tax on real property, nothing of the kind should be contemplated. Whatever claims the local divisions may justly have on the overfilled treasury of the commonwealth, must be set aside until the taxation of real estate is left exclusively to them. The abolition of the state tax on real estate is perhaps the most necessary reform in our general system ; to this all other reforms must be subordinated. If indeed the commonwealth treasury should be supplied through other sources, such as a state inheritance tax or a state income tax or a state tax on other elements, then it would be possible not only to abandon the state taxation of real estate, but also to relinquish to the localities a portion of the state corporation taxes. But until that time arrives, a distribution of the corporation taxes among the local divisions will be inadvisable. The logical plan for the immediate future is to tax corporations on their net receipts for state purposes (with the requisite qualification for transportation companies), and to tax them on their real property for local purposes. This, and this alone, satisfies all the demands of scientific method and of practical policy.<sup>1</sup>

EDWIN R. A. SELIGMAN.

<sup>1</sup> The next essay will be devoted to an economic analysis of the intricate problems of incidence and double taxation as applied to corporations.

## ISTORICAL JURISPRUDENCE IN GERMANY.

WHEN the reception of the Roman law in Germany had become an established fact, there followed a period, culminating about the middle of the sixteenth century, when the western part of continental Europe recognized practically a system of jurisprudence. In Germany, wherever, as in the courts of limited jurisdiction, the administration of justice had not lost its close communion with popular custom and sentiment, the principles of Germanic law preserved their identity; they no longer commanded respect or recognition among those who studied and practised the law as a profession. The spirit of the Renaissance had exerted as strong an influence in Germany as in any other field. Ever since the opening of the new German universities, young Germans of rank and ambition had crossed the Alps to share in the newly revived learning of Roman law, and with their knowledge of the *Pandects* they brought home an open contempt for the native laws of their country. While the codified systems of the Roman, the French, and the feudal law were adopted entire, the German laws were recognized only as special customs, to be proved as such, and to be operative under Roman theories of prescription. It is not difficult to understand the irresistible fascination which a system like that of the *Digest* must have had for the German mind; the influence of Italian jurists is more remarkable. Many parts of the Roman law had necessarily to be excluded in the reception as altogether unsuited to the conditions of the age; but even in this sifting and rejecting process, the method of Italian commentators was closely followed in Germany. The methods of the Italian schools where the Roman law had first been taught were naturally enough adopted in the new German universities,—methods in which a close regard for practical application excluded any free scientific treatment of the material. The same foreign influence is

manifested by the great number of Italian collections of cases and precedents that were published in Germany. The connection with France was hardly less close than with Italy. The authority of such civilians as Cujas and Doneau was recognized throughout Europe. The latter taught law at Heidelberg; and many other French jurists, when forced to leave France on account of their Protestant faith, found an honorable refuge in German universities.

This international unity of the science of jurisprudence would have been impossible without the general use of Latin as the common language of all learning; but it depended still more upon the substantial identity of legal principles among the various nations, which resulted from the recognition of the Roman law as the governing system. The Holy Roman Empire considered the Roman law as a natural inheritance, and the territorial princes found that its adoption served their own dynastic interests. Its study was a necessary qualification for any higher official career, and in point of dignity the degree of doctor of laws was considered equivalent to a title of nobility. It was natural that such advantages should attract the best talent among the younger generation. That the Roman law was in a manner unpopular, foreign and exclusive, far from weakening its hold upon lawyers, was more likely to have the contrary effect. Certainly such a consideration could have no weight against the admitted technical and scientific superiority of the *Digest*. But notwithstanding all these elements of strength, it is difficult to conceive how the Roman law could have spread so widely without some measure of popular support. As a matter of fact, it met with little favor on the part of the common people. It was one of the principal grievances of the peasants at the time of their great revolt in the sixteenth century. Their protests and remonstrances, however, had little effect. In a struggle between two legal systems, technical perfection counts for more than popular sentiment; and in technical perfection the German law was hopelessly inferior. In the eyes of the civilians it was a barbarian, almost a foreign system. The attempt to re-publish some of the old German popular



codes was actually criticized as a violation of Justinian's edict against the revival of antiquated laws. The Germanic system could not be destroyed; but the very hope of its preservation lay in a temporary defeat, which compelled it to yield and to withdraw into lower and more limited spheres, where obscurity was its best protection.

It is impossible to say what the outcome of this period of legal history would have been, if there had been a constant and uninterrupted progress on the lines of development then laid down. We may picture in imagination as the final result, a system of universal law raised upon the basis of an international science of jurisprudence. But in the light of actual history, this period of unity appears rather as a period of preparation and transition, during which the germs of national formations were slowly maturing, which were to be engrafted upon the common Roman stem. In the seventeenth century came a reaction. It was directed on the one hand against the purely exegetical and practical treatment of the Roman law; on the other, against its absolute domination, to the almost total exclusion of territorial customs. Thus two opposite tendencies prevailed at the same time: one, mainly speculative, seeking to overcome the limitations of the Roman law by resort to the utopian regions of a law of nature; the other, under the influence of the new inductive philosophy, opposing the foreign system by a patient study of positive facts and by a return to the rich material of native law and custom. The former tendency was represented chiefly by Pufendorf; the latter marked the beginning of historical jurisprudence, and found its foremost representative in Conring, whose work *De Origine Juris Germanici* was published in 1643. In the light of sober historical investigation many an argument in favor of the Roman law was now discovered to be a fallacy. It had been generally believed, for example, that the Roman law had been introduced by an express act of imperial legislation; Conring showed that this was an error. The Roman law thereby lost a fictitious title, and its claim to recognition was put upon the true foundation, *vis.* the reception by the universities and by the



practice of the learned judges. The study of jurisprudence, which up to that time had been almost entirely concentrated upon the *Institutes* and the *Digest*, now began to embrace those Germanic legal institutions which the Roman law had never been able to eradicate. Since the Roman law was recognized to have been received by custom, it was now admitted that such parts as were not congenial to German ideas and institutions could not have been included in the reception. Efforts were made accordingly to assimilate the two systems, and the result of this modernizing and Germanizing process was the so-called *usus modernus Pandectarum*, which became the basis of German civil law. Beyond this, however, jurisprudence gained neither in method nor in content. The scientific work, if it may be so called, consisted chiefly in disquisitions on dogmatic and practical subjects, and, so far as it was historical, in the collection and study of antiquities.

The eighteenth century is not remarkable for any great movement in German scientific jurisprudence. The humanitarian philosophy which, having become popular in France, had spread from there into Germany, and which led to reforms often of a revolutionary character in all departments of legislation, was merely the consequence of movements of thought and speculation that had originated in the preceding century. It carried no new life into the work of theoretical jurists. The only man who approached the study of legal institutions with more than the spirit of the abstract philosopher, antiquarian or practitioner, Justus Moeser, was not a man of the universities. He opposed the new philosophical school that drew its inspiration from France. His essays breathe the true historical spirit ; but his conclusions are frequently vitiated by a preference for the "good old times," which forms the burden of all his writings and which at times makes him appear narrow and extreme. His work, moreover, lacked scientific method and completeness. But he at least gave inspiration where the professors failed to awaken the faintest interest. Complaints about the dry and barren character of the study of jurisprudence at the universities were loud and general. Men of genius and ability, like

ing Goethe, found in this department of learning nothing could attract them, and the law was studied merely with a view to the professional career to which it afforded access. Yet at the end of the last century the state of the private law in Germany was such that a scientific and historical unification of the whole field was greatly needed. The multiplicity of systems was most bewildering. The Roman and the German law stood side by side with conflicting claims and uncertain boundary lines. The former was at least a unit in fact and in theory; but the latter was split into as many different varieties and systems as there were or had been sovereign territories in Germany,—and their name was legion. There had accumulated a vast wealth of legal material, unsifted and unorganized. The time had come to create out of this incoherent mass one organic whole,—to establish unity of law, by perfecting the naturalization of the Roman and searching out the fundamental principles of the German system, and by reconciling the conflicting tendencies of the two. The various attempts to bring order into this chaos by codification show that the urgent was the need of reform, and it was eminently desirable that the practical work of the legislator and statesman should be guided by principles which could be revealed only by the patient researches of the student and the scholar. The time was favorable to scientific reforms. Kant's critical philosophy had stimulated all departments of intellectual activity into new life, while the achievements and the spirit of a classical literature were infusing some elements of broad and enlightened culture into even the most pedantic learning. Even, from a somewhat narrower point of view, the study of jurisprudence profited by the intense national spirit which, at the beginning of the present century, revived interest in whatever was German in character and purpose,—in German language, German history, German antiquities and even in German law. Fortunately, the same time in which these conditions combined also furnished the men who could turn them to account. Two men above all others are identified with the renaissance of jurisprudence: Eichhorn and Savigny. Niebuhr,

the historian, lent his invaluable aid from a neighboring field. His investigations and discoveries in the earlier periods of Roman history had a direct bearing upon the knowledge of the Roman law in its beginnings. Eichhorn created the historical study of the German law. He was the first to present its history in a connected and organic form, emphasizing at the same time the place of legal institutions in the general life and history of the nation. Niebuhr's *Roman History* appeared 1811, Eichhorn's *History of the German Law* in 1808, Savigny's treatise on *Possession* in 1803.

Savigny's leading position was secure from the first, and his fame has not been eclipsed by that of any other jurist. The impression which his strong individuality made upon his contemporaries must have been wonderful, and some of this personal influence seems to have been perpetuated in his writings. His work alone would have been sufficient to effect a complete regeneration of jurisprudence. He found it a dry and formal system of learning; he left it a liberal science of infinite possibilities. He was to the science of law what Lessing was to literature, what Niebuhr was to history, or Ritter to geography. His work, like Blackstone's, is still read and studied while all earlier legal writings have become antiquated. The effect of his very first treatise was marvellous. His historical genius, the elegance and precision of his reasoning and his classical treatment of legal subjects raised jurisprudence at once to a height which it had never before approached. Up to that time the *Digest* and the *Institutes* had been treated merely as a code or statute book, — a collection of rules to be adapted, as best might be, to the requirements of modern practice. The Roman law had been regarded as a system that had to be accepted, because it was the law in force. Scientifically it had hardly advanced beyond the stage in which Justinian had left it. The Romans themselves had not treated it as a science, had not penetrated into the *raison d'être* of its principles, or attempted to study the relation between the various parts of a complicated organism. They had, however, the same justification or excuse that the English lawyers have now, namely, that the law was a

tion of their own and part of their life, and that they supplied the fundamental unity of system by their own living creations and by the spirit of a truly national jurisprudence. For the Germans, however, the Roman law was really a foreign system, which, to be absorbed and assimilated, had first to be rejected. If it was not to remain a foreign system—so it was argued—the German jurists would have to analyze its principles, and out of these principles to construct a scientific jurisprudence, thus making it a new and national creation.

It is obvious that this treatment of jurisprudence was above the historical. However satisfactory the old method was for the routine of practice, it was certainly impossible to comprehend the vital spirit of the Roman law without a knowledge of the various phases of growth through which it had gone. Savigny became the enthusiastic leader of the new historical school which found the centre of its activity in the recently refounded University of Berlin. In 1815, the publication of a *Journal of Historical Jurisprudence* was undertaken by Savigny, Mittermaier and Goeschen. In the first number Savigny developed

a sort of programme of the aims and views of the new jurisprudence. Evidently there was only one true method of jurisprudence, and Savigny was its prophet. Already in 1814, in a small treatise on the *Vocation of our time for Legislation and Jurisprudence*, which became famous in connection with the question of codification, he had laid down the views which were adopted by the historical school as to the nature and origin of law. He started from a conception of law which was then

common, but from which few would now withhold their assent, even though unwilling to concur in all of Savigny's conclusions.

For him law was a creation of the collective national mind, inseparably interwoven with national life and character and with the permanent conditions of the national civilization. It was no more the product of an arbitrary will than language or religion. The work of many generations, it was beyond the immediate control of any particular age. Therefore Savigny regarded historical continuity as the first condition of healthy national life. "The true doctrine," he says,

teaches that every age creates its world not for itself and arbitrarily, but in close communion with the whole past. In consequence, every age must recognize something that is given, which is necessary and free at the same time : necessary because not dependent upon the arbitrary will of the present ; free because as little dependent upon a foreign command, but rather produced by the higher nature of the people as a constantly growing and developing body.

And more particularly with regard to jurisprudence :

The substance of the law is given by the whole history of the nation, not arbitrarily, so that it might happen to be this or that or something else, but grown out of the genius of the nation and its history. The deliberate effort of every age must be directed towards the task of understanding, renewing and keeping alive that necessarily given material.

“The historical conception of law,” says an eminent German jurist,<sup>1</sup>

sees in the mass of existing rules, not the aggregate product of individual and separate wills, but the creation of the nation's legal instinct, evolved out of the conditions of changing moral ideas, economic and other determining influences, the result of national reasoning for thousands of years, which in the formation of a national system of law has to overcome difficulties and obstacles of all kinds. The historical conception of law does not merely deal with the interpretation of statutes, but its task is to teach the comprehension of a rule of law as the last formal expression of a process at work in the national genius ; it attempts to reproduce the peculiar mode of legal thought of every age, and thus represents the connection of law with the moral life of the nation. A natural consequence of this principle in its application to German jurisprudence was the division of the material into the two great masses of Roman and German law, because only in this separation the view of the connection between nationality and law could have its full force.

To Savigny and his school the understanding of the past involved a close study of all preserved records and authorities. The work of historical investigation was, however, to be confined to the Roman, the German and the canon law. From the very beginning the most excellent results were achieved in

<sup>1</sup> Gerber, formerly professor of jurisprudence at Leipzig.

field by such men as Savigny, Eichhorn, Niebuhr, Rudorff, and many others. By a peculiar favor of circumstances as just at that time that the material for historico-legal archæology was enriched by the most valuable additions. In 1816 Niebuhr, by a happy chance, discovered at Verona the palimpsest which the greater part of Gaius's invaluable *Institutes* was brought back to the world. There followed in almost unbroken session a series of other important discoveries, partly of manuscripts, partly of inscriptions on monuments, etc. The importance of these latter records enlisted this branch of archæology most successfully in the service of historical jurisprudence. Even now, in retracing the work done in Savigny's school and under his guidance, we can feel some of the enthusiasm which inspired a number of the ablest scholars to co-operate in a field in which they were virtually pioneers. Savigny's best historical work was the *History of the Roman Law in the Middle Ages*; and with very few exceptions, his minor essays and dissertations dealt with Roman law. Eichhorn was recognized as foremost in the department of German legal history. The lead of these two was followed by a host of scholars of ability and astonishing industry. The admirable efficient organization of science in the universities secured necessary distribution of labor, with an intelligent appreciation of the work to be done. All the recesses of German and of German legal history were explored; the old German codes were edited, the inexhaustible records of municipal history were investigated, the philological method was applied to the criticism of Roman legal writers, and the collection of inscriptions was undertaken on a systematic plan. Every branch or phase of German or Roman legal history was searched and researched with utmost patience, and with constant rejection or modification of former results,—the comparative freedom from the worship of authority being one of the chief distinctions of German scholarship, as it was the indispensable condition of scientific progress. It is, however, pertinent to ask how far Savigny's ideal conception of the value and aim of historical jurisprudence was realized. On this point the jurist above quoted says:

It is well known how this historical principle influenced the development of our science. The right knowledge of actual law was infinitely promoted. And this knowledge was deepened to an extent hardly anticipated, resulting not only in the formal abstraction of ideas and principles, but including the conception of ultimately practical considerations. So also the practice of the law has gained ; for all deeper historical knowledge of law affords greater ease and security in determining its present applicability. Especially the science of the German law, embracing as it does an extraordinary mass of native material, has gained a height from which alone every individual expression of particular laws can be truly measured. This distinguishes German jurisprudence from that of other civilized nations. Compared with the English learning of statutes and precedents, it is a true science in the highest sense of the word, constantly aspiring to these two great aims : to comprehend the wealth of historical growth, and to transform the ideas underlying the historical material into forces of actual and present operation.

This was the view of the historical jurists, which, however, was not allowed to pass without opposition. Something like partisan spirit was carried into the question by the antagonism of the so-called philosophical school. When Savigny explained the principle and the scope of the historical school, he alluded to another school, which seemed to him so indefinite, so unprincipled and so mixed of various elements, that he could find no better term for it than "unhistorical." This implied, of course, that his school embraced everything that was true, scientific and excellent ; the other school, all that was the contrary. This other school, however, was not without its able advocates, foremost among whom was Professor Gans of Berlin. To most students Gans is little more than a name ; but in his day he was the leader of a party and somewhat of an intellectual power. As he is mentioned repeatedly in Heine's works, his name is secure from entire oblivion ; although the nature of Heine's comments may hardly appear gratifying to Gans's admirers. Gans professed himself an enthusiastic follower of Hegel, and the darkness of the master's teaching so obscures the legal philosophy of the disciple, that sometimes we stand hopeless before the oracles of his wisdom. But the preface to his *Law of Suc-*

*cession in its Universal Development* is well worth reading, as an exposition of the tendencies of the two opposing schools and as a reply to Savigny's arguments

The point at issue between the two schools was really as old as human nature and common to all science. It arose out of the conflicting claims of the past and the present. The historical jurists were strongly impressed with the power of historical conditions, the force of tradition, the danger of change, the value of conservative sentiment, the accumulated experience of by-gone ages, and the tenacity of habits of life and thought by mere force of prescription, — all conditions of strong effect in the domain of private law. The philosophical jurists stood for actual and living forces that ought to assert themselves against the influence of ages that were dead and buried, and against a past that had no rights except by sufferance from the present. It might seem that the science of jurisprudence was not required to give a decision favoring one view or the other, — that its function was to measure the conflicting forces, to determine their mutual operation and interaction and to recognize both alike as necessary elements in the evolution of law. The conflict between the two schools would then have been of a purely abstract character, involving only the relative strength of the antagonistic elements. But the natural desire to be felt as a controlling influence in shaping practical affairs led constantly to encroachments upon the domain of legislative problems.

The two parties first joined issue on a question that could never be solved by theory, — that of the codification of the civil law for the whole of Germany. Thibaut had started the controversy by a pamphlet strongly advocating such codification, and Savigny replied in the famous essay on the vocation of his age for legislation and jurisprudence. He made this the occasion of an elaborate discussion of the rise and growth of private law. As is well known, his conclusion was that, since law was chiefly a product of given historical conditions, a full understanding of those conditions was the indispensable prerequisite of any productive activity, and that his time was not qualified for such a task. Practical reforms would have to wait



until science and theory had done their work. It is easy to understand that such a view would meet with strong opposition. The age which had seen great reforms in government and administration, would hardly be inclined to proclaim its own impotence in dealing with the problems of the private law; and the idea of deferring reforms until science should have completed its task and theorists should have arrived at a unanimous conclusion, could not appear acceptable to practical statesmen. The philosophical school, moreover, considered the burden of historical survivals heavy enough without increasing it by constant reference to the past; and they knew that the habit of looking backward was not favorable to the spirit of reform. The conscious and artificial revival of conditions of the past which was urged by the historical school must not be identified with that instinctive conservative sense of historical continuity which lives in English jurisprudence, and there satisfies the conditions of legal development required by Savigny. Such an instinct cannot be created by any amount of historical study. Yet the jurists of Savigny's school considered their science merely in the light of a great school for practice; it was declared that all historical studies should find their consummation in a truly national code. This position was attacked by the philosophical school, and here it presented a strong case. Gans clearly distinguished between the art and the science of law, and sneered at the idea of a science which was to be merely the handmaid of practice. He repudiated the absolute dependence upon history, urging the rights of the living against the claims of the dead. "It is true," he said, "that in every time there lives the whole past, but the past changed into another moment. The actual and active present must not be conscious of that past; life must not feel the death out of which it has grown."

Returning to the purely scientific aspect of the controversy, it was natural that fair-minded representatives of either school should see that jurisprudence could not rest on either philosophy or history exclusively. This difficulty was overcome by each side arrogating to itself the credit of a true combination of both

elements. Savigny, as we have seen, refused to his opponents any designation but that of "unhistorical," claiming the true philosophy for himself, and his fundamental conception of law was doubtless philosophical, formed more by intuition than by historical researches. On the other hand, the philosophical school admitted the value both of Savigny's views and of his followers' achievements; but they insisted that the former were too narrow and the latter too barren; they required something besides history, and laid the principal stress on that additional element.

It cannot be denied that, from the scholar's point of view, the historical stands far above the philosophical school. The former had the advantage of being led by men of unrivalled scholarship. It wasted no time on general theories. It was not split into dissenting sects. The direction once given, the possibilities of valuable work in the field of historical research were unlimited. With the philosophical school we are not here concerned further than to show its opposition to the historical school. An intelligent criticism of its work would require an extended review of the condition of German philosophy in the first half of this century, for which this is not the place. The fact must however be stated, that while the aims of the philosophical school were large and profound, and scientific in the best sense, it was very poor in corresponding tangible results. This failure had the effect of bringing legal philosophy generally into disrepute, and this, again, reacted unfavorably upon the historical school. The tendency of that school was naturally to overestimate the value of positive data and to concentrate its energy upon historical detail. Savigny himself encouraged this.

It is the triumph of historical science [he said] if it succeeds in conveying the results of its investigations to our mind directly and immediately, like a living reality. . . . But it is not always possible so to penetrate into the true spirit of history, and the effort to accomplish no less result than this inevitably leads to a superficial treatment, which, with an empty pretence of philosophy, is indeed more barren than the opposite purely positive tendency.

He quotes Goethe's words: "I do not know of any worse pretension, than if one claims to understand the spirit, to whom

the letter is not clear and familiar" ; but he fails to add that no accumulation of letters will supply the spirit, unless they are read by a light which has to come from other sources. The exaggerated view of the importance of a mass of facts and data easily leads to a form of science which thrives on industrious and painstaking mediocrity, which revels in minute criticism and ingenious conjectures — erroneous, as has been shown, in nine cases out of ten — and to which the discovery of new manuscript is the highest triumph of scientific achievement :

Und ach, entrollst du gar ein würdig Pergamen,  
So steigt der ganze Himmel zu dir nieder.

There is some force in what Gans said in opposition to Savigny's views :

The historical school has generated among jurists a deep-seated hatred of philosophy and of all thought not engaged in the discovery of facts, — a hatred which here appears directed against philosophical law, so that it is mentioned only with a sneer and with reprobation, as if the historical jurist could have no pure conception of history, were he to acknowledge a law of nature. Out of this school also has proceeded the worship of what is outward and positive. To every note and passing dictum an exaggerated importance has been attributed, and under the noise and clamor of that worship the true essence, the spirit, has been completely lost.

Perhaps this statement is colored by partisan spirit, and allowance must be made for exaggeration. The historical school had doubtless widened ideas of law and given a higher dignity to the science. In its beginning the school had felt the call of a mission, in which it had by no means entirely failed. But it would have been difficult for any movement that began with so much genius and inspiration to maintain itself on the same level on which it had started. The nature of the work itself invited a waste of energy. It is an apparent advantage of legal history that most of its material is presented to us directly, and not through a medium. It may seem as if the legal authorities, if completely collected and correctly transmitted, were really perfect and unimpeachable evidence. But this view does not take

account the unavoidable imperfections of the law as it is ten and reported — its uncertainties, gaps and inconsistencies.

Moreover, there is often a strong undercurrent of living sentiment which is at variance with the formal expression of legislator's will. The law as it appears on the statute book be different from the law which practically governs civil actions. The true principles must sometimes be read between lines, and the "notes and passing dicta," of which Gansks, often contain valuable information. For this reason, peculiar significance may attach to any term or expression in given circumstances. The historical jurists were there constantly tempted into drawing distinctions of the utmost subtlety, into interpretations that could be neither proved nor disproved. They were prone to establish doctrines on very slender foundations, and to engage in interminable disputes which could lead to no result. With a constant recurrence to the same problems and a never-failing crop of small controversies, there was a lack of large and fundamental theories that might have advanced the true conception of law; and the vain attempts to carry conviction to other minds, in cases where evidence was susceptible of more than one interpretation, absorbed much labor and ingenuity that might have been employed to better advantage.

There was one resource against the dangers flowing from the peculiar difficulties of evidence, and that was to extend the field of observation. The information derived from different systems of law would have been an admirable corrective of doubtful conclusions drawn from defective or misleading premises. But this was just what the historical school neglected to obtain. We have seen that in their practical views they always referred the present to the past; in their theoretical views, many of them fell into the graver error of constantly bringing the past to the present. Historical study was a school of civil legislation; therefore historical research was burdened with a practical purpose which did not advance the true interest of science. Savigny himself, by precept and by example, encouraged the limitation of historical jurisprudence

to the Roman, the canon and the German law. The few writers who ventured outside of this territory confined their researches in foreign law chiefly to public or *quasi*-public institutions. To the philosophical school is due the credit of having insisted, from the very outset, on the value of comparative jurisprudence. They pointed to Montesquieu's work as a step in the right direction, while the historians undervalued, perhaps, its easy deductions and wide generalizations, bold indeed, and often mistaken, yet eminently suggestive. Thibaut had said that ten clever lectures on the jurisprudence of the Persians or Chinese would convey to students a better understanding of law, than a hundred on the miserable failures in the legislation on intestate succession from Augustus to Justinian. Gans placed these words at the head of his great comparative study on the laws of succession, while Savigny made them the subject of sarcastic criticism. But with few exceptions, the philosophical school did little or nothing to work out its own suggestions. The solid and conservative work of the historical school attached to it the best scholarship in legal science. With all their faults, the historical jurists were at least first of all jurists ; the representatives of legal philosophy were first of all philosophers, and some of them were no jurists at all. No reform in jurisprudence could be successful without enlisting the forces of the former school.

It is significant that dissatisfaction is beginning to spread in the ranks of the historical jurists. There is a feeling that the results obtained stand in no just proportion to the immense amount of labor that has been expended. The great achievements in other departments of science have aroused in many jurists the unpleasant consciousness that they are lagging behind in the race. They find it no longer possible to work in self-sufficient isolation, and to disregard the larger standards established by new discoveries in other fields of knowledge. It is becoming generally recognized that Savigny's fundamental theory of law cannot remain unshaken for all time. It has been remarked that his conception of the origin of law as exclusively national, fails to explain even so important and

familiar a fact as the reception of a foreign system of law in Germany. His philosophy is beginning to be seriously attacked even by representatives of the historical school. In an article published about two years ago, "On the boundary lines of historical jurisprudence," Professor Bekker, of Heidelberg, takes a despondent view of the condition of his science. He asks for reasons why jurisprudence is outrun by natural science, history and even philology, both in actual results and in popular interest. The latter he is sure will come with the former; for it is only success that attracts. He demands better method and better co-operation, and, with the true scholar's spirit, more thorough investigation of the material. At the same time, and very wisely, he recommends the adoption of a more attractive style of writing, a most desirable reform in view of the forbidding and esoteric character of most legal works. "Where we do not write for scholars only," he says, "still our works are written for a strictly limited public of students and practitioners. The art of treating questions of jurisprudence scientifically, and at the same time in a manner that is generally intelligible and interesting, has become rare." But it is admitted that the fault lies chiefly with the narrow range of the science, and ✓ that the true remedy is to be found in the application of the comparative method. In view of the fruit this method has borne in natural science, its adoption has become a necessity. Even the very limited use thus far made of it in jurisprudence has almost accomplished a scientific regeneration.

In this new field both historical and philosophical jurists may meet to work together. The historical school virtually abandons its old exclusiveness, although it does not admit the priority of other claims. It is still filled with the inherited distrust of philosophical speculation. Professor Bekker, in his article, makes no reference to Ihering, or Dahn, or Post, prominent leaders of the new movement; and yet Ihering has in a large measure solved the problem so anxiously discussed by Bekker. In his *Geist des römischen Rechts* — that marvel of ability, as it has recently been called by an English critic — he has almost succeeded in making jurisprudence popular. His work presents

a most attractive combination of historical and philosophical treatment, and he makes excellent use of the limited store of foreign law at his command. We may agree or disagree with his theories and conclusions; but his method ought to commend itself to jurists, if not for its intrinsic merit, at all events for its undoubted success.

In Germany, the adoption of a civil code for the whole empire, which is now under consideration, may also be expected to have a salutary effect upon jurisprudence. So far both Roman and German private law have, in their traditional form, been in actual force, though limited by a continual reduction both in territory and in range of subjects. This fact has necessarily affected the historical treatment of legal questions. Even where codes have existed, the two historical systems have been felt to be of practical influence as the common law of Germany. To a certain extent this will continue to be the case for some time; yet the new formal creation of a national body of private law will, by placing practical jurisprudence upon a modern and well-defined basis, relegate history to the position which it ought to occupy. In this sense the new code may effect an emancipation of science from subserviency to practical considerations, and may set free energy and interest for a higher treatment of jurisprudence. Some such view is taken by Ihering when he says:

The fact that the Roman law has been superseded formally in the greater part of the territory where it used to be in force, is of the same determining influence upon life and science as its former reception. The formal unity of the science resulting from the recognition of a common code in the greater part of Europe—the collaboration of jurists in the various countries on the same material and the same task—is gone forever. Science has been degraded to sectional jurisprudence; political have become scientific boundaries. A lamentable and unworthy condition of science! But it is in its own power to break down such barriers and, in the form of comparative jurisprudence, to secure for all time that universality which it so long enjoyed. The method will be different, the judgment more matured, the treatment of the material more liberal, and the apparent loss will be a gain, raising the science of law to a higher level.

We may concur in the hopes so eloquently expressed ; but it is scarcely to be admitted that the collaboration of the jurists of various countries is gone forever. On the contrary, the methods of comparative jurisprudence can be successful only through such collaboration. Any highly developed system of private law must receive its scientific interpretation, in the first instance, from those who are in close contact with its practical operation ; and it is from those that foreign jurists must draw their information. Germany alone cannot produce a science of comparative law unless aided by the jurists of other countries. And from no quarter could the Germans derive more valuable information than from English and American jurisprudence. At the beginning of this century the civil law of Roman origin was virtually the common law of Europe, and therefore of the civilized world. The private law of England presented almost an anomaly in its isolation. But since then the English common law has spread over a new world, and rules now as wide a territory and perhaps as many people as the civil law. We have thus two great legal systems, standing side by side, assimilating rapidly through identical conditions of civilization and the close intercourse of nations, but without losing their historical continuity. The understanding of legal problems is best gained infinitely through the study of the evolution of two systems, from independent sources and in different forms, to substantially the same results. But this work has hardly been begun as yet. The comparative study of jurisprudence is now chiefly confined to primitive systems of law. But the village community and the patriarchal system are not a sufficient foundation for a science of law. To a philosophical conception of law, the study of its early beginnings is no more essential than that of its more refined developments ; and in this latter study there is the great advantage that, its data being accessible and abundant, its conclusions need not rest upon a basis of certain evidence and doubtful conjecture.

ERNST FREUND.



## ITALY AND THE VATICAN:

### THE POLITICO-ECCLESIASTICAL POLICY OF BARON RICASOLI.

AFTER the death of Count Cavour, the central figure among the patriots and statesmen of the Italian revolution, with the exception of King Victor Emmanuel himself, was unquestionably the Baron Bettino Ricasoli, leader of the parliamentary Right, or *Moderati*. By intellectual conviction and spiritual loyalty a devout Catholic, he was at the same time the uncompromising opponent of ultramontane principles, and the most eminent among the lay advocates of a liberal reform in the church of Italy. Some knowledge of Ricasoli's politico-ecclesiastical policy and of the principles upon which he attempted, however unsuccessfully, to settle the mutual relations of church and state is necessary to a clear understanding of the Italian politics of that period, as well as of the ecclesiastical problem which even yet awaits its definitive solution at the hands of Italian statesmen and church authorities.

The representative of probably the oldest existing family in Tuscany, and in personal character an illustration of the finest type of the ancient Italian nobility, Ricasoli took little part in public affairs under the Lorraine dynasty; though his counsel to the grand duke in 1848 and again in 1859 placed him at once in the front rank of Tuscan patriots. He held for a short time, in the former year, the office of gonfalonier of Florence. After the Florentine revolution of April, 1859, he was called to occupy the ministry of the Interior in the Tuscan provisional government of Boncompagni, — a position which insensibly became in his hands a practical dictatorship, by virtue of which, as well as of his sternly inflexible political integrity, he was able to resist the demands and to thwart the intrigues of the French Emperor, and to secure the grand duchy, and

with it all central Italy, to Italian unity and nationality. It was at this time that he declared it to be thenceforward his policy "*il sommergere questa povera Toscana nell' oceano dell' Italianità*" (to sink this poor devotion to Tuscany in the ocean of Italian nationality).

While Ricasoli thus practically held the future of Tuscany in his hands, Monsignore Limberti, archbishop of Florence, addressed to him, in December, 1859, a semi-official complaint of the governmental sufferance under which a certain Mazzarella, a lay evangelist then preaching in that city, was assailing the church. It was in his reply to this complaint that Ricasoli first publicly declared the principles of his later ecclesiastical policy. "Liberty of conscience and the free exercise of public worship," he wrote to Monsignore Limberti, under date of December 16, 1859, "[are each alike] a right of every one who is responsible to God, . . . a fact of the universal consciousness and a principle of the public law of every civil state." He significantly recognized "the Catholic religion, if no longer dominant, yet as prevalent" in Italy. In harmony with this language, Ricasoli, when governor-general of Tuscany in 1860, under the North Italian *Statuto*, refused to give formal permission for the opening of an American Episcopal chapel in Florence, on the express ground that to grant such a permission would imply a right in the government to withhold it; whereas he insisted that the free right of public as well as of private worship was inherent in every one, and that it was so recognized by the new constitution and political principles of Italy.

The death of Cavour in June, 1861, at almost the very hour when the union of southern with northern Italy was consummated in the Parliament of that year, arrested abruptly the onward progress of the national movement. The King and the people alike turned to the stern and resolute Tuscan patriot, whose acceptance of the succession, under the circumstances, was declared by Count Mamiani on the floor of the Italian Senate to be an act of "civil heroism." On this occasion, an address to him published in the *Gazetta del Popolo* contained the following expressions, which are noteworthy as the language

of one who knew Ricasoli personally and well, and as having been, in all probability, first submitted to him for his sanction :

You have recognized that religious conviction is a sanctuary within which the civil power may not enter, — every man having an inalienable right to establish with the Divinity such relations as he may deem right, of which relations his own conscience is the only judge. . . . You have recognized that religious liberty is not merely a right, but an imperious necessity of human nature ; that it is itself a law, even before its formal utterance, and the code can proclaim but not create it. . . . You have recognized that, as liberty of conscience is a right of the individual, so liberty of worship is a right of the community.

On the first of July immediately following, the new prime minister laid before the Italian Parliament the programme of his proposed government, and especially an exposition of his policy for the solution of the Roman question. At the instance of Cavour, Parliament had formally declared the city of Rome to be the necessary capital of Italy ; but it had been left to those who were to come after to reduce that declaration to actuality.

We intend to go to Rome [said Ricasoli], not destroying, but constructing ; providing the opportunity, opening to the church the way of self-reformation ; giving to it that liberty and that independence which may be at once the means and the incentive to regenerate itself in purity of religious sentiment, in simplicity of manners, in the strictness of discipline which, so greatly to the honor and dignity of the pontificate, made its primitive times glorious and venerated ; . . . with the frank and loyal abandonment of that [temporal] power which is utterly opposed to the grand and wholly spiritual purpose of its institution. . . . The Italian revolution is a great revolution, precisely because it begins a new era. Italy has had this great trust committed to her — to lay the foundations, not only of her own future, but also of that of the whole human race.

A few days later, pursuing the same line of thought in a private letter, — quoting indeed this, his own language to Parliament, — Ricasoli added further that “to reform an institution, the best method is to restore it to its own first principles.”

Such was Ricasoli's interpretation of the formula which Cavour had given to Italy : “A free church in a free state.” Cavour had very clear ideas of that which alone could make a

to be free. He thoroughly and fully realized that it was freedom from foreign domination and from domestic autocracy, — not to Italian civil freedom constitutional government was as necessary as the expulsion of the Austrian power. But Cavour never seemed to have advanced so far from the ancient ecclesiastical ideas of his country as to make his reasoning about the church equally clear and logical. He unconsciously accepted the dictum of Pius IX: "*La Chiesa son io*," and tacitly assumed that release from secular or external control was sufficient to give freedom to the church. The recovery of the church's internal or constitutional liberties was, therefore, no necessary part of his politico-ecclesiastical policy.

Ricasoli seems to have been the first of all Italian statesmen who clearly perceived and fully realized that such freedom as one could harmonize the Italian church with a free and constitutional Italian state would be freedom from internal as well as from external oppression; that it must be freedom from ecclesiastical autocracy as well as from secular domination; in other words, that the free church of Italy must be a reformed or demoralized Catholic church. But since the attempt to effect such reform by secular constraint and by political pressure would be a violation of its external or civil freedom, he also saw that the state could consistently do no more than set before the church every motive and encouragement to voluntary self-reformation. While, therefore, in his own personal relations with the church, as a private lay member of her communion, he would gladly do whatever he might to hasten a readjustment of her relations to the state, and such internal reforms as he held to be necessary to those relations, yet, in his official and political position, as representing the state in its dealings with the church, Ricasoli consistently resisted every attempt to put political pressure upon the church for those purposes.

His policy in this respect never commended itself generally to the English friends of Italy, who thought it alike the wisdom and the duty of the Italian government to play a vigorous part in constraining the church to such a readjustment and reformation as were demanded by national interests. Ricasoli himself

was accustomed to say that the ecclesiastical principles of English political philosophy were less helpful to Italy, in this her great problem of problems, than were those which underlay that of the United States. It should be added, however, that the latest judgment of Mr. Gladstone on this issue is said to be in substantial accord with that of Ricasoli; and that the latter came to wonder why the course of American politics so often ran counter to American politico-ecclesiastical principles.

In accordance with the programme enunciated by him on accepting office in 1861, as above stated, Baron Ricasoli addressed to the Pope a letter, accompanied by certain articles proposed as a basis of negotiation. These were not, however, formally submitted to the Pope, for he refused in advance to consider or even to receive them. On the 20th of November of that year, Ricasoli laid before Parliament a statement of the course he had attempted to take. The majority, however, was by no means prepared to concur in such a policy. It was opposed equally by those who sustained the stand taken by the Pope and defended the temporal power, and by those who were too hostile to the church willingly to see the hold of the state upon her in any degree relaxed—least of all while the Pope was so bitterly and obstinately adverse to the new civil and political life of Italy. Nothing, therefore, came of this. Yet there were some who fully appreciated the profound and generous statesmanship of the prime minister, and were able to discern with him the distinction between the Italian Catholic church and the papal and curial government of that church,—the distinction on which alone his statesmanship was based. One deputy declared: “It is necessary to go to Rome, but upon the overthrow of papal principles; for otherwise we shall not long remain there.” And the eminent jurisconsult Mancini said:

For the rest, signori, be sure of this: Whether the papacy reconcile itself with Italy or not, these will, in the not distant future, be everywhere the reasonable relations between the church and the state; this is the destiny of human communities. Whether to-day the Pontiff consent or not, Italy will one day come of her own accord to concede to the church this liberty and this freedom of action as an exercise of

the personal liberty of citizens ; although the proposals of the honorable president of the council have for the present only placed Italy in a position to predict, if we may so express ourselves, — to anticipate this great and inevitable reform.

Ricasoli held office at this time less than a year. He was reserved, taciturn, apparently somewhat haughty ; at all events, he wholly lacked the popular manners and the political flexibility which are in Italy, as elsewhere, commonly essential to success in public life, and he was therefore fitted for the serious crises of statesmanship, rather than for the management of men and the guidance of government under ordinary conditions. But, in this brief tenure of power, he secured European recognition for that which had thus far been accomplished, and he inaugurated a five years' peace, during which Italy was enabled to organize the results of the two preceding years, and to await the fulness of time for her advance to Venice and Rome.

It was more than two years after the resignation of the first Ricasoli ministry that Minghetti, in 1864, negotiated with the French government the so-called September Convention. In accordance with this, the French troops were to be withdrawn from Rome, where their presence was a standing cause of popular irritation against France, and on the other hand, the seat of the Italian government was to be removed from Turin to Florence and the Pope was guaranteed by Italy against all attack from without. About the same time, Signor Minghetti himself published an able pamphlet, in which he proposed a solution of the Roman question. To the leading principles of this pamphlet reference will be made further on.

The September Convention proved very unpopular, and the Minghetti ministry was forced to resign. La Marmora, who succeeded to the government, at once submitted to Parliament a project of law for the "suppression of the religious orders and for the disposition of the ecclesiastical property." This project, being referred to a parliamentary commission, of which Baron Ricasoli was chairman, was by him reported back on February 7, 1865, but so greatly modified that it was now rather the baron's project than that of the ministry. While

this was under discussion in Parliament and without, the Pope expressed a wish to confer with some representative of the Italian government in reference to the many vacant episcopal sees in Italy, which, as the law then stood, could not be filled without the concurrent action of the Pope and the King. The project and the report on it were therefore withdrawn, and Signor Vegezzi was sent as a commissioner to Rome. From this, however, nothing practical resulted beyond the arrest of the discussion in Parliament; and such, not improbably, was the real object of the papal court in asking a conference.

Under these circumstances, Ricasoli on July 11, 1865, published a profession of his political principles, which may be taken as the accepted platform of that portion of the *Moderati* which looked to him as their leader.

What [he asked] are to be the important articles of our creed? In the *political* order, the monarchy and the constitution, and in these, the completion of the national unity. In the *administrative* order, decentralization, liberty, everywhere.

The monarchy has, among us, been the author and the promoter of liberty and of independence, the fulcrum of the development of the national destinies, the bond of union between Italian peoples divided for ages. Reason and sentiment alike draw us to this form of government and secure our devotion to it. The constitution is the foundation of our public rights, the basis of our liberties. . . . Decentralization ought to consist in calling the citizens to administer public affairs as largely as possible; and this will be accomplished by giving to the commune and to the province the largest local autonomy which is consistent with the unity of the state and the necessary authority of the government. . . .

This, as respects general principles. We cannot, however, forget that we have two special questions which it is impossible to put aside and the solution of which depends in great part on a wise internal policy: the question of Venice and the question of Rome.

The question of Venice is simple; . . . to the authorities of the state must be freely intrusted the selection of the time and of the means.

More complex — far more complex — is that of Rome. The convention of the 15th of September simplifies it to a certain point, since it fixes a limit to the occupation [of that city] by arms which, although allied and indeed friendly to Italy, are yet foreign. Italy, it is needless to say, must respect that convention and scrupulously execute it. . . .



the convention, it is no longer Italy which must go to Rome, but Rome which must come to Italy. The political problem, however, is more complicated with the religious problem; and it would be vain to hope that the one can be truly solved without a true solution of the other.

When I call it a religious question, I use a common expression which is perhaps not exact; for it is not the interests of religion that are at stake, but rather those of the curia and of the clerical body. The Italians are and will remain Catholics. They wish to respect and to be respected the liberty and the dignity of the church and of the Pope, and of the Roman head of the church and the clergy: but they do not wish to give to the Pope and to the clergy a liberty of privilege which is converted into aggression and into war upon the nation. Now we have seen that the time has come to put an end to this conflict of ages between the state and the church, . . . nor other way do I see to accomplish this than by separating state and church. . . .

On the 4th of November, 1865, the French troops were drawn from Rome, and the Roman question was so far disarranged until the re-occupation of that city in 1867, in consequence of the violation of the September Convention by Garibaldi. Two weeks after the evacuation the Italian Parliament met for the first time in Florence, now the capital. In the opening speech from the throne, Victor Emmanuel referred to the "negotiations with the pontifical see" which some months before had been undertaken by the government, but which "had been cut short when they were found to militate against the interests of the crown and of the nation." These words were greeted with a storm of almost universal applause, which was only less general when the King added: "The Italian people must disembarass themselves of those traditions of the past which arrest the perfect development of their new life. You must therefore, have to consider proposals for the segregation of the church from the state and for the suppression of the religious orders." This word "segregation" had been carefully chosen, rather than "separation," to indicate a policy less radical than that which had been proposed by Ricasoli. Those proposals which were only segregated would not be wholly freed from all secular or governmental control.



In accordance with this programme, the La Marmora ministry now brought before Parliament the so-called Sella-Cortese project of law, the partial acceptance of which wrought the suppression of the monastic corporations of the religious orders. More than this, however, was not accomplished at this stage of affairs. The time for national advance had now come again. La Marmora, having concluded an alliance with Prussia for war against Austria, resigned office to take command of the armies of Italy, and Baron Ricasoli was called the second time, in June, 1866, to the charge of the government.

This war resulted in the freedom of Venetia and its union with the Italian kingdom. But for this Italy was more indebted to diplomacy than to arms. The Italian forces had been unsuccessful alike on land and on sea, and Venetia was ceded by Austria, not to Italy, but to France. Napoleon sought to detach Italy from the Prussian alliance by offering, on the one hand, Venetia as the purchase price of that withdrawal; and by threatening, on the other, to summon the *Corps Legislatif* and to lay before it a project of an alliance between France and Austria. In the spirit of another Tuscan's famous reply to the French Charles VIII, Ricasoli peremptorily refused to violate the good faith of Italy. "Should the Emperor convoke the *Corps Legislatif*," replied he, "we will convoke Parliament." Napoleon knew with whom he was dealing. He remembered 1860 and he shrank from an issue with such a man. The honor of Italy was maintained; but Venetia was none the less ceded to her. The revolution was thus completed at the north, and Rome alone remained to be redeemed.

Strengthened by the success in the one case, Ricasoli now addressed himself to the far more difficult and complex question. Never had Italy more confidence in "*il fiero Barone*" than now; and never, it would have seemed, was he better able to carry Parliament and the nation with him in a policy of wise conciliation and reform. In Ricasoli's own subsequent language, his first measures were prompted by a desire to facilitate the solution of the Roman question, by frankly separating the political issue from that of religion, and by disembarassing the

former of the latter, — being careful that, in no degree nor under any pretext, should the question of Rome lose its character of an internal issue, and that no attribute of internationality should in anywise be impressed upon it.

He first, therefore, by a circular of October 22, 1866, recalled to their respective sees the bishops who either had themselves abandoned them or had been exiled on account of their hostility to the national movement. Sixteen only, who had taken up their residence in Rome, were excepted, but permission to return was extended to these in November. The ground of this concession was expressly stated: that, since the acquisition of Venice, the Italian kingdom was now established on such a firm basis that their hostility could be disregarded; and that, moreover, the bishops equally with all others were responsible to the laws which were now the sufficient guarantee of the public peace. On the very day upon which it was decided to extend this concession to the bishops in Rome, they addressed to the prime minister from Rome a protest against their exclusion, attempting at the same time to draw an unfavorable contrast between the conditions in which the church was then placed in Italy, and those under which the Roman Catholic bishops of the United States had lately held a synod in Baltimore. Ricasoli replied, congratulating them upon their admiration for American laws and for the principles of religious liberty.

This recall of the bishops was followed, at the Pope's request, by sending to Rome the Commendatore Tonello, to resume the negotiations of the Vegezzi mission of the preceding year, touching certain purely ecclesiastical matters in which the Italian kingdom was concerned, and especially in reference to the appointment of bishops to the vacant sees, of which there were now as many as eighty. The chief difficulty in the way of such appointments was that by any formally concurrent appointment — save only in the case of the vacant Sardinian sees — the Pope would give an official recognition to the results of the Italian revolution, and to Victor Emmanuel as King of Italy. The instructions given to Signor Tonello, and his

correspondence with the minister of Grace and Justice, fully sustain the language in which Ricasoli characterized his policy. To cite a sentence :

Your mission limits itself, in effect, to persuading the Holy Father to recognize the fact that the Italian church will meet no obstacle in its spiritual action within the Kingdom of Italy, whose new institutions and laws do not differ from those of other states which have a Catholic majority of the population, save in the larger liberties which the church enjoys here.

At the same time, while the ministry pressed upon the Pope the fact that the clergy were originally chosen for their respective charges, and the bishops for their several sees, by those over whom they were to be placed, — a custom to which the Pope was warmly urged to return, — twenty of the eighty vacant Italian sees were nevertheless filled by mutual agreement between the civil and the ecclesiastical government, in accordance with existing laws.

During the continuance of these negotiations, *i.e.* on January 17, 1867, Signori Borgatti and Scialoia, the ministers of Grace and Justice and of Finance, respectively, laid before Parliament, on behalf of the Ricasoli ministry, the project of a law "for the liberty of the church and for the disposition of the ecclesiastical property." This project, the recall of the bishops to their sees and the Tonello mission were severally parts of one politico-ecclesiastical policy, for which Baron Ricasoli, on a subsequent occasion, personally accepted the responsibility. Yet even these measures fell short, in some important respects, of that policy as he had two years before submitted it to the judgment of Italy, and as he would now have again pressed it upon Parliament, had he not deemed it hopeless to do so.

Three distinct schemes had now been brought forward, — by the La Marmora ministry, by Ricasoli and by Minghetti, respectively, — for defining and settling the future relations between the Italian church and state and for the disposition of ecclesiastical property. All alike proposed to terminate the existing imbroglio and to adjust the complicated relations of church and

by a severance of the ecclesiastical interests of the one from purely political interests of the other. Ricasoli and Minghetti proposed such a complete *separation* as would leave no intimate official relations between them. The La Marmora project, on the contrary, had proposed rather a *segregation*, by which was apparently intended the retention of certain official relations with the church, which were to be administered, however, as an interest wholly distinct and apart from those of secular politics. All three plans designed, moreover, to take from the church and put into the hands of the state the great landed property which the former held in mortmain, — in Sicily, for instance, as much as one-third of the island, — and so to restore to active uses enormous tracts of land remaining unimproved and lying comparatively idle in the possession of ecclesiastical corporations. They all required that such real estate and such property generally as was not actually devoted to religious purposes (excepting thus churches, ecclesiastical residences and monastic gardens, seminaries, libraries, *etc.*) should be sold, — a certain portion of the proceeds to be surrendered to the church and the remainder to be converted into government securities. The total annual income of such property was estimated by Minghetti at some ninety millions of lire, or about fifteen millions of dollars. It was in the disposition of that portion of these revenues which was to be left to ecclesiastical corporations that the three schemes most widely differed. The La Marmora project proposed that the state should place these securities or their revenues in trust, thus keeping control of them, while yet administering them for the benefit of the church. It involved a great reduction in the number of bishoprics,<sup>1</sup> canonries, *etc.*, and the total suppression of the monastic orders, but provided on the other hand for the salaries of such ecclesiastical dignitaries as should continue to be recognized by the state, as well as for the pensions of the members of the suppressed orders. Minghetti proposed that one-third of the proceeds of the sale should go to the state, the other two-thirds being handed

<sup>1</sup> From 235 to 69.

over to the existing ecclesiastical authorities to be used or disposed of by them at their own discretion.

Ricasoli concurred with La Marmora so far as concerned the suppression of the religious orders and the great reduction in the number of bishoprics and of other diocesan or cathedral dignities. But for all questions of church property and of financial administration, he had proposed to call in the lay element. He had proposed to constitute parochial and diocesan corporations, — the one to be chosen by the male Catholics of the parish over thirty years of age ; the other, by the clergy and the representatives of the diocesan laity. To these corporations severally he had proposed that the state should pay over the securities destined for support of the churches, bishops, clergy, *etc.*, in their respective parishes and dioceses. Indeed, Ricasoli further proposed to entrust the nomination of parish priests to the parochial boards, and that of bishops to the diocesan boards, saving, in either case, the respective rights of their ecclesiastical superiors.

This recovery of the lay element — this committal of the secular and financial interests of the church to those only who represented alike the clergy and the laity, and this recognition of the church as so represented, rather than as constituted in the persons of the Pope and cardinals of a politico-ecclesiastical close corporation possessing no claim to a representative character, — these were features peculiar to Ricasoli's policy. These were the distinctive characteristics of that policy as laid before Parliament by him in January, 1865, when reporting on the Sella-Cortese project, and as widely discussed at that time by the Italian press.<sup>1</sup> Ricasoli had not then been able to commend this part of his report successfully either to Parliament or to the press ; he did not, therefore, deem it wise to burden with these provisions the project of law laid by his ministry before Parliament in January, 1867. He held the more advanced and char-

<sup>1</sup> It will be noted that the La Marmora and Minghetti projects were both conformed in principle to French precedents; that of Ricasoli — especially as reported in 1865 — was much more nearly allied to American laws and customs respecting the church.

eristic features of his policy in reserve for a more propitious season, and contented himself for the time being with such a measure which would probably arouse least opposition.

The leading provisions of the so-called Borgatti-Scialoja project now submitted by the second Ricasoli ministry were as follows: The measure was, in the first place, frankly entitled "project of law 'for the liberty of the church' as well as 'for the disposition of ecclesiastical property.'" As to the *freedom of the church*, the scheme provided: that the "Catholic Church in the Kingdom" should be free from all state interference in respect to its worship or to the management of its internal affairs and self-government; that no official recognition of ecclesiastical appointments or oath of allegiance or royal *quatur* and *placet* should any longer be required, nor should political privileges or immunities be thereafter accorded to that church; that the canons, laws and established customs of that church should no longer have the force of laws, save so far only as they could be equitably held to constitute conditions in voluntary contracts, and so far also as they should be consistent with the laws of the state; and that the church, in holding and administering her own property and depending for support upon this, together with such further provision as might be voluntarily made by her own adherents, should have no claim for such support upon the state. As to the *disposition of ecclesiastical property*, it was provided: that all cathedrals, churches, ecclesiastical residences, seminaries, grounds and gardens, libraries, monuments, statues and pictures, in use or in possession of the church, should be exempt from alienation; that all hospitals, schools and property belonging thereto should be secured to the communes in which they were found, in trust for the same purposes; that all other ecclesiastical lands and estates, whether of personal property, rents and revenues, whether actually in the possession of the church or in that of the state, including the property of the lately suppressed religious orders already in the hands of the government, should be sold and the proceeds thereof converted into government securities, within the period of ten years; that the gross amount of these securities should

be divided between the church and the state in the general proportion of two-thirds to the former and one-third to the latter; that, estimating the probable gross value at eighteen hundred millions of lire (about \$360,000,000), if the bishops would themselves undertake the conversion of this property into such securities, this should be permitted to them, on condition of paying to the government the sum of fifty millions of lire (\$10,000,000) semi-annually for six years; or, if the government should charge itself with this conversion, with all the risks and expenses thereof, it should pay over to the church — one-half to the bishops and one-half for the expenses of worship — securities to the value of fifty millions of lire annual income; that from the portion coming to the state, provision should be made for pensioning the surviving members of the suppressed religious corporations, — the state retaining the remainder on the ground that the government would now be charged with many educational and charitable interests for which, among other things, the church had, in other times, received this property.

It is to be noted that in this project the Pope and the ecclesiastical authorities of Rome, in their extra-diocesan relations, are not so much as once named or referred to. The whole question of the extra-diocesan functions of the bishop of Rome and his relations to the church at large, is tacitly treated as one with which the state as such has nothing to do. The subject is regarded as one between the Italian government and the Catholic church of the Italian provinces, as represented by the bishops of that church, each for his own diocese. Indeed, it was a logical consequence of Ricasoli's politico-ecclesiastical philosophy, that the state could not enter officially into the question of the extent to which the authority of the bishop of Rome had been or should be carried beyond his diocese; this question lay wholly between that dignitary and the church, whether in Italy or in other lands. It is also especially to be noted that, in the language of an Italian editor,

the liberty in accordance with which it was proposed to regulate the relations between the Catholic communion and the state, was not a con-

cession for which a corresponding advantage could be asked, but the logical and the necessary application of a principle, equally appropriate to the relations of the state with other religious confessions.

The Italian Parliament had not been ready to sustain Ricasoli's proposed bases of agreement with the papacy in 1861. It had not been at all prepared to concur in the amendments which, in 1865, he proposed to the La Marmora project. So too in 1867, it was not sufficiently advanced in the true conception of religious liberty to accept even the modified, but still wise and generous policy which was urged upon it by the most enlightened and prescient Italian statesman of his day. The discussion of the project did not really advance beyond the first title. Those who would not consent to any release of the church from secular constraints, and those who, agreeing to such release, were yet unwilling to treat her so generously and with such fearless confidence in the regenerating power of liberal institutions, — both united with those who, in hostility to all such dealings with the church and papacy, opposed the project on principle and *in mine*. Ricasoli, in consequence, dissolved Parliament and frankly appealed to the country. A new Parliament assembled on March 22. The discussion upon the proposed "Law for the liberty of the church" was resumed almost at once; but a decided majority was still adverse to what were held to be pericious concessions, and early in April the Ricasoli ministry resigned. The Commendatore Ratazzi, leader of the so-called left, the party most radically hostile to the church, was thereupon called to take the reins of government. It was on the ground that he was too generous to the church and that he was, in that generosity, disarming the state in her bitterest struggle for liberal institutions and nationality, that Baron Ricasoli was defeated. In July following, the proposed policy of the Ricasoli ministry was made the subject of a searching and hostile discussion, on which occasion the official correspondence of the Tonello mission was published. In the course of this debate, the baron said:

Signori, you may indeed condemn me; but, beware lest future facts



should prove me right. Above us is another court, that of public opinion: and then, even should this fail, there is the consciousness of having done one's duty.

Ricasoli never again accepted the government, although his counsel was frequently sought, especially in any serious issue, alike by the King and by the ministry for the time being. It was once said of him, that save in a great emergency, he could not be expected to undertake the heavy cares of leadership. He refused even a seat in the Senate of Italy. To the day of his death in 1880, however, he was unfailingly returned to Parliament by his own constituency — much as in the case of John Quincy Adams, whom, in singleness of character, in unbending moral courage and in political integrity, he greatly resembled. He was always in his seat; he closely watched every debate; he rarely spoke, but when he did so, he commanded the most reverent attention.

After the occupation of Rome by the Italian army, in 1870, and before the removal of the seat of government from Florence, Parliament was called on by the Lanza ministry, then in power, to consider a project of that "Law of the Papal Guarantees" which was intended to place upon a definitive footing the relations of church and state in Italy, as well as to secure to the Sovereign Pontiff that independence, on the ground of which alone Europe could be expected to acquiesce in his loss of temporal power. This project was what might have been expected of a government which regarded the papacy, the church and even Christianity itself solely as elements in a political problem; and whose attention, moreover, was at the time drawn far more to the diplomatic Scylla than to the ecclesiastical Charybdis. They offered the Pope and the papacy dignities, privileges and immunities which left the Catholic governments of Europe nothing to desire for the papacy, so far as their own interests were involved, whatever they may have left Italy to desire for her own.

The leading provisions of this remarkable law were these: As to the Pontiff, his person was declared sacred and inviolable, and sovereign honors were accorded to him throughout the

kingdom; he was authorized to retain the guards of his palace; a sum of 3,225,000 lire annually was assigned to him as a charge on the public debt, this being the estimated income of which he was deprived by the loss of the temporal power, and which was declared exempt from taxation; the Vatican palace (to which was afterward added the Lateran), with the museums, libraries, gardens, *etc.*, Santa Maria Maggiore and Castel Gandolfo on the Alban Hills were assigned to him, and these or any temporary residence of the Pope, as well as the seat of the Sacred Conclave when assembled to elect a Pope, were to enjoy entire immunity from civil jurisdiction, and freedom from official visitation. The right to publish all bulls, briefs and other decrees whatever, either in the established way, by affixing them to the gates of the basilicas, or otherwise, was assured to him; the cardinals and other officials were to enjoy entire immunity in the discharge of their ecclesiastical duties; the Pope was permitted to have his own post and telegraph offices, and his legates and the representatives of other powers accredited to him were to enjoy the usual diplomatic rights and privileges. So much regarding the papacy. As regards the church, all ecclesiastical acts throughout the kingdom were to be exempt from civil interference; the *appello ab abuso* was repealed, but, at the same time, the use of the secular power to sustain or execute any such acts was wholly forbidden; all ecclesiastical meetings were to be free, without the necessity of asking permission from the government; all ecclesiastical nominations to be made without government interference; oaths of allegiance to the crown no longer to be required of the bishops; the royal *exequatur* and *placet* to be abolished; and all ecclesiastical institutions at home to be free from the interference of the secular authority. In this project, from the nature of the case, the papacy necessarily appeared in the forefront, as it had not in those before submitted to Parliament. This project, moreover, did not exempt any "disposition of the ecclesiastical property." But, even in these two respects, it will be readily seen that the plan was largely an acceptance of the principles first enunciated by Ricasoli in 1860 and 1861, and even of those set forth

in his project of 1867, — in certain particulars, indeed, inclining rather to the Minghetti policy, inasmuch as it would turn over the control heretofore exercised by the state to the hands of the existing ecclesiastical authorities.

An important amendment in this project, which was proposed in committee and adopted, was that which divided the law into two distinct titles, — the one relating to the “Prerogatives of the Supreme Pontiff and of the Holy See,” and the other, to the “Relations of the Church with the State.” This amendment more strongly marked the distinction between the papacy and the church — a distinction which was an essential feature of Ricasoli’s politico-ecclesiastical philosophy. It was when the second title was under discussion that Ricasoli made a last attempt to secure recognition for his favorite idea — that the laity should have a share in the care of the church’s secular interests. A considerable party of *Moderati*, seventy-nine in all, including some of the truest patriots and clearest-headed statesmen in Parliament, under the lead of the baron, brought forward what were known as the Peruzzi-Ricasoli amendments, which aimed to call into existence, as in the project of 1865, lay and other representative bodies to whose hands the power of the purse should be entrusted. These amendments did not, indeed, prevail; and all that was then and there accomplished in that direction was an explicit reservation to the state of the future power to make such a provision. But this was much — especially in view of the fact that the discussion of these proposed amendments, in Parliament and in the public press, was of a most thorough and morally effective kind.

This law of the Papal Guarantees was accepted by Europe, and it has been loyally obeyed by the Italian government ever since; but it has been practically defeated by the authorities of the Vatican. So far as it is to be considered an understanding with Europe, it is probably still binding; but so far as it is to be regarded as a treaty with the papacy, it has surely been rendered null and void. Many an Italian publicist has been led by the course of after-events to realize that Ricasoli was the one statesman of the Italian revolution who understood the

the relations of church and state in Italy — who most profoundly appreciated, in some of the most serious problems which his age has inherited from the past, the solvent power of law-reverencing liberty.

In the spring of 1873, in a parliamentary crisis which, at the time, seemed to jeopardize the government and possibly the monarchy, Ricasoli rose in his place and, applying his principles to the one issue then before them — the question of the monastic corporations in Rome — lifted the whole subject to such an elevated plane of justice and generosity and faith in law and liberty, that he commanded the support of the better elements of every party and carried all before him. The King drove to his villa the next day to thank him; and the far-seeing statesman had a foretaste then of that future in whose coming he had expressed, in private, an unwavering confidence, when church and state should be co-ordinated only by a mutual trust, when the church should find its best secular guarantees in the righteous laws of a Christian state, and the state its noblest inspiration in the patriotism and righteous influence of a Christian church.

WM. CHAUNCEY LANGDON.

## BOOTH'S EAST LONDON.<sup>1</sup>

THIS is by far the most important English contribution to economics since the publication of Toynbee's lectures in 1884. The two books have much in common; both illustrate the new interest that is beginning to show itself in the direct study of the actual facts of social life. They differ, indeed, in method. Toynbee's work was the first attempt in England to trace the historical origin of existing conditions, while the aim of Mr. Booth's book is to obtain, by laborious inquiry, a more accurate description than was previously possessed of the conditions themselves. But the historical method and the method of observation—which from the biological sciences is now passing over into the sociological—are closely allied. Those who pursue them agree in the expectation that from the sequence and coexistence of facts something will be learned of their causal relations.

The first volume of *Life and Labour of the People* is a most admirable performance. There have been earlier essays in a similar direction, e.g. the reports of Mr. Leoni Levi; but none of them has been on anything like the same scale, and none has established conclusions of anything like the same solidity and completeness. Mr. Booth has furnished us, not so much with a collection of facts to support this or that theory, as with a great positive addition to our knowledge, far transcending in importance most abstract argumentation.

The book is divided into three parts: "The Classes," "The Trades" and "Special Subjects." Of these the first, by Mr. Booth himself, is by far the most striking. The London school board employs in East London sixty-six "visitors," or attendance officers, who call at every house and draw up lists of children of school age. Each of the visitors has but a few streets under his care; and as most of them have been employed in the same district for several years, they have acquired very complete information as to the condition of the people. From the lips of these officials, Mr. Booth and his secretaries took down a description of almost every house and its inhabitants,—a task whose magnitude we realize when we are told that it dealt with a population of 900,000, living in 3400 streets, and that it occupied the greater part of two years. The data

<sup>1</sup> *Life and Labour of the People*. Vol. I: *East London*. Edited by Charles Booth. Contributors: Charles Booth, Beatrice Potter, David F. Schloss, Ernest Aves, Stephen N. Fox, Jesse Argyle, Clara E. Collet and H. Llewellyn Smith. London, Williams & Norgate, 1889. — 598 pp. With a colored map.

s obtained, being corrected and supplemented from other sources, we as the basis for a division of the population into eight classes, which may be presented as follows :

11,000.  $1\frac{1}{4}$  per cent of the population. *Lowest class of occasional laborers, loafers and semi-criminals.*

This class, though it receives accessions from all the others, is largely hereditary in its character. It is not scattered uniformly over the whole area, but is found in a number of more or less isolated settlements.

100,000.  $11\frac{1}{4}$  per cent. *The very poor, with casual earnings.*

This class is composed chiefly of casual laborers. The adult men, about 24,000 in number, of whom as many as 6000 are sometimes employed at the docks (p. 190), "do not on the average get as much as three days' work a week."

75,000. 8 per cent. } 204,000.  $22\frac{1}{4}$  per cent. *The poor, with weekly incomes of 18s. to 21s.*

Maintained on *intermittent earnings*, and composed of laborers whose work is necessarily intermittent, with a large contingent from the poorer artisans, the street sellers and the smaller shopkeepers.

Maintained on *fairly regular earnings*, and composed chiefly of laborers in permanent employment.

377,000. 42 per cent. *Regular standard earnings* of from 23s. to 30s. weekly.

This includes the more prosperous laborers, a large proportion of the artisans, the best class of street sellers and general dealers, a large proportion of the small shopkeepers, the best-off among the home manufacturers and some of the small employers.

121,000.  $13\frac{1}{2}$  per cent. *Upper working class, earning above 30s. weekly.*

This includes foremen over laborers and the more comfortable among the artisans, together with a number of small employers.

34,000. 4 per cent nearly. *Lower middle class.*

Shopkeepers and small employers, clerks and subordinate professional men.

45,000. 5 per cent. *Upper middle class.*

The servant-keeping class. But of these more than two-thirds are to be found in Hackney, the more genteel northern part of East London.

There seems no reason to doubt the substantial accuracy of these figures, and it would be difficult to exaggerate their significance. Perhaps the conclusion most surprising to the general public is the very small number, comparatively, of the loafing and semi-criminal class. These hordes of barbarians of whom we have heard, who, issuing from their slums, will one day overwhelm modern civilization, do not exist. There are barbarians, but they are a handful, a small and decreasing percentage,—a disgrace but not a danger" (p. 39). Two other conclusions, more cheering than might have been anticipated, are that over

55 per cent of the working population belong to families receiving each more than 21s. a week, and that about 70 per cent can count upon steady employment. I cannot help thinking, however, that, in reaction from the usual melodramatic presentation of East London life, Mr. Booth has commented upon his statistical results in a tone somewhat too optimistic. To say, for instance, of the 200,000 "poor," that "they are neither ill-nourished nor ill-clad, according to any standard that can reasonably be used" (p. 131), is probably to create a more comfortable impression in the minds of Mr. Booth's readers than the author wishes to convey. "Poverty" Mr. Booth defines as an average weekly income of from "18s. to 21s. for a moderate family" (p. 33). But it is noticeable that in the table of household expenditure (p. 138) on which Mr. Booth bases his remarks as to standard of comfort, the average weekly income ascribed to classes C and D is 23s. 6d. Half a crown a week makes a considerable difference. But even with the additional half-crown, a family must needs be very small to secure adequate food and clothing together with fuel and houseroom in London. Mr. Booth's opinion in this matter may usefully be compared with the estimates of Mrs. Barnett in *Practicable Socialism* (1888).

There is another way in which Mr. Booth has unintentionally supplied a sedative to the troubled consciences of some of his readers, and that is by his language in reference to class B: "It is doubtful if many of them could or would work full time for long together if they had the opportunity . . . The ideal of such persons is to work when they like and play when they like; these it is who are rightly called the 'leisure class' amongst the poor" (p. 45). It is not surprising that people are beginning to say: "The distress of the very poor is their own fault. Mr. Booth has proved that they don't want to work." But surely this is to disregard the fact that such moral qualities as shiftlessness and idleness are themselves to a large extent not ultimate facts, but the product of circumstances. It is indeed a defect running through the whole book now before us, that it confines itself too narrowly to the individualist point of view; it describes the condition of the individual and the consequences which flow from it, without attempting to penetrate any further. So in this case. In every class there are doubtless many who fall to a lower social position from sheer incapacity or laziness, and there is nothing more to be said. Of such, class B is doubtless to a large extent composed. But the faults of the class as a whole are certainly in part the result of the character of modern industry. Take for instance the docks,—and what is true of the docks is true *mutatis mutandis* of several employments of unskilled labor: "Twenty years ago a man could be sure of fairly regular employment, say for ten months out of the

ve, and for nine to ten hours a day, and was accustomed to earn on average 20s. to 25s. a week."<sup>1</sup> Then came the introduction of steam navigation and the ever-increasing rapidity of commercial operations; and the sons of the regularly employed men of 1869 became incompetent loafers of 1889 as directly as if the companies had ruined it. This mental result of material conditions is recognized by Miss Potter in her paper on the docks: "The casual by misfortune is to become the casual by inclination. The victims of irregular employment and of employment given without reference to character are slowly surely transformed into the sinners of East-end society" (p. 201). It is a pity that such considerations as these are not put forward more prominently in Mr. Booth's description of the classes.

Part II, "The Trades," is made up of six chapters on the chief branches of employment, together with a chapter on "Women's Work." Each is the result of careful investigation, and one or two spring from personal experience. No such thorough and systematic studies of industrial conditions have ever before been made in England, and they deserve the most careful attention. I must however limit myself in this article to a brief account of their contents. The first, Miss Potter's paper on "The Docks," is written in a more popular style than the others but is also less complete. It gives a clear enough picture of the conditions of labor before the great strike; but it dwells too much on the surface. Without suspecting it, Miss Potter gives us only one view of the situation, that of the dock officials, from whom her information was obtained. According to this view, affairs were in a hopeless state, and nobody in particular was to blame for anything: "the controlled competition of metropolitan industry" led London ship-owners and merchants to play off docks and wharves against one another, while at the same time the volume of business at the port of London was decreasing. As to diminishing the irregularity of employment,—the chief evil, so far as the dockers were concerned,—that was impossible. Had it been possible it would have been attempted: "I think we may rest assured that if a practical plan were suggested by which this might be effected, the employer would be the first to take advantage of it; for the loss entailed by the bad work of the casual is at once unpleasantly realized in the balance sheet" (p. 205). This clearly means that by the continuance of the system of casual employment the directors thought that they got their labor more cheaply, and thereby saved themselves a good deal of trouble; but they did not fully realize that their action was immoral. Before many months had

<sup>1</sup>The London *Times*, August 29, 1889, p. 8: a summary of the evidence before the House of Lords Sweating Committee.



passed, however, we find the *Times* writing thus in its leading article of August 31, 1889 :

It is all very well for the directors to plead that there is an enormous surplus of such labour, and that the men they employ are at least better off than if they had no employment at all. But the fact remains that *they have encouraged the growth of this wretched and shiftless class* by their daily distribution haphazard of an uncertain quantity of employment, and that *the relations established between them and these casual labourers are of a thoroughly demoralizing and inhuman kind.*

The *Times* is neither more moral nor more sympathetic than the average common-sense middle-class Englishman ; it represents his opinions only too faithfully. The fact is that the strike forced the general public for the first time to look closely at the conditions of dock labor, and the moral sense of the community declared that, come what might to dividends or trade, such a state of things could not be allowed to continue. This was a lesson which the dock directors, when they gave Miss Potter their account of the situation, had yet to learn.

The chapter needs supplementing in several ways before it can be regarded as an adequate survey of the problem. For instance, it was declared at the time of the strike, upon the high authority of Mr. Thomas Sutherland, M.P., the chairman of the P. and O. company, that "probably one-half of the capital outlay of the London and St. Catherine Dock, and East and West India Dock Company may be considered obsolete for all practical purposes," and that it was upon this capital, sunk on obsolete arrangements, that the directors were trying to earn profits.<sup>1</sup> This of course did not make it any better for existing shareholders, many of whom had acquired their stock recently, but it needs to be mentioned before we can understand what "making no profit" really means. Again, it would have been worth while to have laid more stress upon the part played by excessive competition in reducing the profits of the two great dock companies. The rivalry between the London and St. Catherine company and the East and West India company ; the time of high profits before and after the opening of the Suez canal ; the construction by the former company of the Victoria and Albert docks, and by the latter of the Tilbury docks ; cut-throat competition and the disappearance of profits ; — this is a sequence of events which would have shown itself sooner or later even if the volume of trade had not diminished. It contains in it no factor peculiar to the docks : it does but illustrate a danger common to all forms of permanent investment under modern conditions. First high profits ; then specula-

<sup>1</sup> Cf. the *London Spectator* for August 31, 1889, p. 260, foot-note.

tive investment; then an excessive supply of the particular service or commodity, and then reckless competition to obtain business on any terms. In America we have become familiar enough with the result of such competition in the shape of railroad discriminations. And like American railroads, the London docks also are beginning to find that safety lies in combination. Since 1888 the two great companies have, I understand, been working under a joint committee, have been able in consequence to raise their rates and have obtained a profit.

The next chapter, on "The Tailoring Trade," is also by Miss Potter, but gives the impression of a more thorough study of the subject. The leading characteristic of the industry is thus summed up:

We have here a new province of production, inhabited by a peculiar people, working under a new system, with new instruments, and yet separated by a narrow and constantly shifting boundary from the sphere of employment of an old-established native industry. On the one side of this line we find the Jewish contractor with his highly organized staff of fixers, basters, machinists, button-hole hands and pressers, turning out coats by the score, together with a mass of English women, unorganized and unregulated, engaged in the lower sections of the trade; whilst on the other side of the boundary, we see an army of skilled English tradesmen [artisans] with regulated pay and restricted hours, working on the traditional lines of one man one garment [p. 209].

The English workman makes hand-sewn garments for the better shops, which supply customers ready to pay a good price for a good article; the Jewish contractor, machine-made "balloons," chiefly for the supply of wholesale houses with cheap ready-made clothing. So far as East London is concerned, it is this "ready-made" or cheap "bespoke" trade, in the hands of a compact Jewish community resident mainly in Whitechapel, that we have chiefly to consider. There are 901 workshops, of which 685 employ less than 10 hands, 201 from 10 to 25, and only 15 over 25. Most of the shops are overcrowded and insanitary; and at busy seasons the hours of labor are excessively long. But there is little or no "sweating" as it is commonly understood, *viz.* the squeezing of profit out of the actual worker by an idle middleman. The middleman, as distinct from the wholesale house on the one side and the labor-contractor on the other, has disappeared. In the vast majority of the shops, the contractor, or employer, works fully as hard as his employees, his standard of living is practically the same, while his profits are precarious and seldom greater than a fair reward for the labor of organization. As to the 15 shops employing more than 25 persons, here the contractor does probably make a very fair income.

But on the other hand the condition of his workpeople is better: the workshop is more healthy and comfortable, partly because he can afford to engage special premises for the work, partly because it comes under the supervision of the factory inspectors; and employment is more steady. The great evil of the situation is just the opposite: it is the ease with which men can set up as independent masters, and the consequent multiplication of small shops. The work of these shops is the manufacture of coats. In the manufacture of cheap trousers and waistcoats there is another set of conditions. Here the competition is between the labor of gentile women, the wives and daughters of irregularly employed laborers,—the vast majority of them working in their own homes for wholesale houses or distributing contractors,—on the one side, and on the other, provincial factories, also chiefly employing women. The distributing contractor here also is disappearing; and the miserable wage of the women in East London is due largely to the competition of the factory where the conditions of life are certainly far higher.

“Bootmaking,” by Mr. Schloss, and “The Furniture Trade,” by Mr. Aves, are two of the longest papers in the volume, and in each case the manufacture is so subdivided, that it is well nigh impossible to give a brief summary of the chapter. In the first of these trades hand-sewn boots made to order occupy somewhat the same position as the better class of coats among tailors; while machine-sewn ready-made boots correspond to the “balloons.” In the latter field it is as easy as in tailoring to set up as a small contractor employing half a dozen hands, though here the contractor does not undertake the whole manufacture, but only a branch of it, such as the making of uppers (the contractors and employees in this case being generally women), the lasting or the finishing (chiefly in the hands of Jews). In the last two branches, the “team-system”—an extreme application of the principle of division of labor—has been introduced during the last few years. It is thus described by Mr. Schloss:

A series of operations, formerly entrusted collectively to a single artisan, is split up in such a manner that one part of the work—that which requires the greatest degree of skill—is performed by a workman who, possessing a relatively high degree of ability, is fairly able to insist upon an adequate remuneration, while the remainder of the work is placed in the hands of men whose greatly inferior competence in their craft forces them to accept a much lower rate of wages [p. 270].

Readers of Mill may remember with what respect Mr. Babbage is quoted as having pointed out “an advantage derived from division of labor not mentioned by Adam Smith,” *viz.* the classification of work-

people according to ability. The effect of this in the boot trade is to substitute for a body of fairly skilled all-round workmen, receiving a tolerable remuneration, a small number of highly skilled men with a relatively high wage, and a great mass of miserably-paid unskilled labor. As newly arrived Jews will accept lower wages and work longer hours than English workmen, another result is that the industry has been largely transferred to foreign hands. Still the master lasters and finishers, with but few exceptions, make no considerable profit. "What the man has to gain by being a sub-contractor instead of a journeyman is chiefly an increased chance of continuous employment" (p. 294). The busy season lasts only from four to six months; and although some few are able to fill up the slack time by alternative employments, "some hundreds of the lasters" (and the same seems to be true of the finishers), "men often of considerable skill in their craft, can for many, and those the bitterest, months of the year obtain little or no employment, and frequently suffer great privations" (p. 268). The furniture trade has much the same general characteristics, — extreme subdivision, and the multiplication of small shops working not for the retailer or private customer but for the wholesale dealer. It also is localized in a small area, chiefly Bethnal Green and Shoreditch. In marked contrast to the prevalent tendency towards the large or factory system of manufacture in most other branches of industry, all the forces in this trade tend to the strengthening of a system of manufacture so small that it may often be called domestic. This development is encouraged by the growth of sawmills tenanted largely by small sawyers and turners "to the trade," and by the creation during the last thirty years of a conveniently near market in the warehouses of Curtain Road. The level of comfort and wages, however, is considerably higher than in the tailoring and bootmaking trades, owing to the greater skill required and to the greater steadiness of employment, which is affected but little by the seasons. Many of the better men earn as much as they did fifteen years ago, and as there has been a considerable fall in prices, their earnings go further; but they certainly have to work at a greater pressure.

Mr. Fox's chapter on "Tobacco Workers" is more cheerful, revealing to us as it does a labor market where fairly good wages are obtained. This seems to be due, primarily, to the circumstance that all the work of the trade (with the exception of a small part of the cigarette making) is necessarily carried on in factories. This, again, is accounted for by the fact that the annual excise license and other excise regulations make necessary a certain amount of capital, "ranging probably from £50 to £60," before setting up in business. An additional reason is that the manufacture of tobacco requires heavy and expensive machinery. The

domestic workshop, the chief difficulty in the three preceding trades, cannot make its appearance. The factory system, bringing the operatives together in considerable numbers, has facilitated the formation of strong trades unions, which have been able to keep up wages ; and it has also facilitated government inspection as to sanitation and hours of labor. The excise tax, often supposed to be an evil, in that it prevents a man from "rising in life" and becoming a master on his own account, is shown to be a blessing, precisely for that very reason. Mr. Fox seems to think that the only persons who have to complain at present are the manufacturers, who are played off one against another by the retail dealers ; and he suggests that they should follow the example of their men and organize. Even that grievous thing, a "combine," may have a good side.

Passing over the small group of silk operatives, numbering in all some 1674 (of whom 1260 are weavers), residing in Spitalfield, and employed chiefly in the manufacture of silk for neckties and scarfs, we come to Miss Clara Collet's chapter on "Women's Work." This deals with the making of shirts, ties, trimmings, umbrellas, corsets and stays ; with furriers (employed largely by small "chamber masters"), the making of boxes, match boxes ("the last resort of the destitute, or the first occupation of little girls expected to make themselves useful between school hours"), brushes, matches and confectionery, and with a few minor industries. Miss Collet has succeeded in saying much that seems to be both new and true on a somewhat hackneyed subject. She remarks, for instance, that where a trade is irregular, the employment of outdoor hands has at least this good result, that it enables the employer to keep a small indoor staff permanently employed. Irregularity in the employment of married women who work at home is at least a lesser evil than irregularity in the employment of girls. It is a striking fact, again, that among factory workers there is a general uniformity of wage, although the match girls and jam girls have neither to exercise so great skill nor to work so hard as capmakers and bookbinders. The explanation is that the former, with many others employed in such rough work as ropemaking and the like, come from a lower class and earn their own livelihood ; the latter, with those employed in other genteel occupations, are the daughters of clerks or upper-class artisans, living with their parents and competing with one another only to procure dress and luxuries.

It will be convenient to postpone for a moment Mr. Booth's chapter on "Sweating," which opens Part III, and look next at Mr. Llewellyn Smith's chapter on "Influx of Population." This provides a much-needed corrective for the vague ideas that were prevalent as to the connection

between East-end conditions and the "attraction of population" from rural districts. Mr. Smith shows that the percentage of the population of East London and Hackney born outside of London is actually less than the percentage for the whole of London; for while in London as a whole only 629 out of every 1000 are natives of the metropolis, in East London the numbers are 720 out of 1000. It must be observed, however, that these figures do not give an entirely adequate representation of the migration from outside; they have to be compared with this other fact, mentioned by Mr. Smith, that among *adult male* inhabitants of London some 46 or 47 out of 100 were born in London itself. Mr. Smith never reassures us with regard to one field of employment, at any rate, in which country labor was supposed to play an important part, — the docks. He shows good reason to believe that there is now but a small movement in that direction: thus, out of 514 of the more regularly employed casuals in the West India dock, 361 were born in London; of the 153 outsiders, only 17 had resided in London less than ten years (3 less than 5, and 1 less than 1). It is to be regretted, I think, that with these very important conclusions to present, Mr. Smith, still more Mr. Booth, should have weakened the force of their argument by a too evident desire to take a cheerful view of the situation. This has led to some very inconclusive statistical reasoning. Mr. Smith (p. 505), and Mr. Booth, following him (p. 555), estimate the increase in population due to immigration by (1) taking the excess of births over deaths during the decennial period, 1871-1881, (2) treating this as "the natural growth" of the population at the beginning of the period, (3) adding "the natural growth" to the population in 1871, then (4) subtracting this total from the population of 1881. The result is called the "net-influx"; and by this process it is brought down to some 10,000 a year. But this includes, as part of the natural growth of the population of 1871, the children born to the immigrants to London during the next ten years; and, as the great majority of immigrants are adult, in many cases young men who marry within three or four years of their arrival, this is a not unimportant consideration. But, not content with minimizing the inflow, in more than one place our authors seem inclined to maintain that it is actually *balanced* by an outflow! Thus, in mentioning the figures before cited as to the number of persons born outside of London, Mr. Smith continues:

The facts would seem *at first* to be conclusive evidence of a *considerable* loss of population from other parts [surely it proves at least as much as that]. But a very large part of this admixture of population merely results from the ordinary ebb and flow of labor, set up by numberless industrial causes in all parts of the kingdom alike [p. 504].



Mr. Booth goes still further :

Influx cannot be completely studied apart from efflux. Population flows out of, as well as into, the great cities, *so that the movement looked at rationally is a circulation* [Mr. Booth's italics], which is not only healthy in itself, but essential to national health. . . . Influx in each case is balanced in large measure by efflux of some kind [pp. 554, 555].

The chief arguments adduced by Mr. Smith are that in the whole of England and Wales only 720 persons out of 1000 were living in the county of their birth, and that in the seven greatest Scotch towns only 524 out of 1000 were natives of the town. But the Scotch case only proves that what is true of London is also true of all great cities ; and the other fact is perfectly consistent with an influx to the cities. There is evidently much truth in the proposition that there is an efflux as well as an influx ; but stated as it is by our authors, it tends to obscure the significance of one of the most marked of modern tendencies, — a tendency which shows itself in America almost as much as in England, — that towards the increase of the urban at the expense of the rural population.

The concluding paper in the volume is again from the pen of Miss Potter and describes "The Jewish Community." This community numbers in all from 60,000 to 70,000 persons, of whom perhaps 30,000 were actually born abroad and have come to England since 1881. For the present the flood is at an end, though it will probably set in again with any renewal of the *Judenhetze* on the continent of Europe. The newcomers are willing to work as "greeners" for some small labor-contractor in the coat or boot trade ; but in most cases they seem to succeed after a time in pulling themselves up into a better position and starting in as small masters themselves. How they manage to do it Miss Potter thus describes :

It is by competition and by competition alone that the Jew seeks success. But in the case of the foreign Jews, it is a competition unrestricted by the personal dignity of a definite standard of life, and unchecked by the social feelings of class loyalty and trade integrity. The small manufacturer injures the trade through which he rises to the rank of a capitalist by bad and dishonest production. The petty dealer, or small money-lender, . . . suits his wares and his terms to the weakness, the ignorance and the vice of his customers ; the mechanic, indifferent to the interest of the class to which he temporarily belongs, and intent only on becoming a small master, acknowledges no limit to the process of underbidding fellow-workers. In short, the foreign Jew totally ignores all social obligations, other than keeping the law of the land, the maintenance of his own family, and the charitable relief of co-religionists [p. 589].

These evil tendencies are unfortunately strengthened by the policy of the Jewish Board of Guardians, — the dispensers of the charity of wealthy English Jews towards their miserable fellow-believers. Out of some £13,000 to £14,000 expended annually in relief, about one-half seems to be lent or given in the form of business capital, enabling the workman to rise into the position of a small master. The recipients are not pauperized; but the class through whom they make their way upward are still further degraded (pp. 573. 574).

I have reserved until last the consideration of Mr. Booth's practical conclusions, based on the evidence thus collected. They will be found in his chapter on "Class Relations" at the end of Part I, as well as in the chapter on "Sweating," before referred to, and in his concluding remarks. I am afraid it must be said that Mr. Booth is more convincing when he sets forth the results of his investigations, than when he comments upon them. An example is furnished in what he says of sweating. He points out, what is abundantly manifest from the sections on the tailoring, bootmaking and furniture trades, that the sweater of the popular imagination — the grinding middleman fattening on the profits he sweats out of wages — has no existence; the true sweater, as the name is employed in the trades themselves, usually without any particularly bad connotation, is the small, struggling master. He tells us that it is "the multiplication of small masters" which really leads to the sweating evils of long hours, low pay and unsanitary conditions" (p. 488); and again, that "the trades of East London present a clear case of economic disease, and the multiplication of small masters is the tap-root of this disease." He offers the very practical suggestion that the work of the factory inspector should be facilitated by obliging every owner of premises used for manufacturing purposes and also the employer, when any labor other than that of the wife is employed, to take a license. Thus, when Mr. Booth has the facts in his mind, he recognizes distinctly that certain forms of industrial organization have evil results.

But our author is a statistical economist only by grace; by nature he would appear to belong to that larger body of "common-sense" persons according to whom the one explanation of every difficulty is that all cannot be equal, and that the "fittest" come to the top. And sometimes nature is too powerful for grace: as where, speaking of the evils which exist in the sweated industries, Mr. Booth tells us that "many or *perhaps most* of them are not due *in any way* to the manner of employment. Their roots lie deep in human nature." And again, with more emphasis: "Such troubles have not, *on the whole*, much to do with any system of employment: they are part of the general inequalities of life" (p. 487). It is not that there is no truth at all in this view of the matter; but it



is surely stated too broadly here, and it is precisely passages of this kind that are so eagerly seized upon by the apologist for things as they are. Moreover, such undue emphasis on one side of the problem seems to prevent the writer from taking a concrete view of the situation when he comes to make his final suggestion. With class A, he tells us, nothing is feasible except its destruction; it must be "harried out of existence" by the enforcement of sanitary, police and school regulations. But with class B the case is different: they are the incapables, who cost more to the community than they produce, and who pull down, by their competition, classes C and D. If only B could be removed from the scene, C and D would get on well enough. Let the state, then, take charge of them,—they are but 100,000,—and remove them from the sphere of competition. The practicability of this plan for saving individualism by a large dose of socialism, as Mr. Booth himself describes it, I need not here consider. But the point I would ask Mr. Booth's attention to is this: Granting that such a disappearance of class B for a time would be in many ways a relief, is not the present organization of industry of such a kind that it would at once begin to grind out another class B? Mr. Booth has examined (pp. 147, 148) into 1600 families belonging to classes A and B. Of these, 60 were loafers, and there were 231 "whose poverty was the result of drink or obvious want of thrift." But 441 "had been impoverished by illness or the large number of those who had to be supported out of the earnings"; and if you abolished class B to-day, men of class C, from sickness or from having large families, would begin to renew it to-morrow. It is still more significant that there were 878 "whose poverty was due to the casual or irregular character of their employment, combined, more or less, with low pay." Even if these are now not fit for anything better, still, as we have seen in the case of the dockers, their very shiftlessness or laziness is itself in some measure the result of irregular employment. It is in economics as in philosophy: free will and necessity are both true; circumstances are as men make them, and men are as circumstances make them.

If I have dwelt unduly on what seem defects, it is because the book is packed so full of useful matter that it is impossible to furnish an abstract of it. In spite of all its limitations, it gives us a foundation such as we never had before both for practical action and for economic speculation. I trust Mr. Booth will have strength and perseverance to go on with his task. I must not omit to add that the book is accompanied with a wonderful map of East London, wherein each street is marked according to the class of its inhabitants. This should be the model for many a similar chart in our great cities, which would be of no little service in the practical work of charity.

W. J. ASHLEY.

## REVIEWS.

*The Theory of Credit.* By HENRY DUNNING MACLEOD, M.A.  
In two volumes. Vol. I. London, Longmans, Green & Co., 1889.

Mr. Macleod's latest work, of which the first volume is before us, is a restatement, with amplification, of the first volume of his *Elements of Economics*, published nine years ago, which was itself a restatement, with amplification, of an earlier work, *The Elements of Banking*. His aim in all three of the works named is to show that credit is capital. This conception has been in the growing or progressive stage in his mind. In the *Elements of Banking* (page 143) we find it stated in these words: "Hence it is seen how mercantile credit is mercantile capital," the identity of credit and capital being here limited to mercantile affairs. In the *Elements of Economics* (I, 178, 179) it is shown that an order for, or a promise of, or a right to, goods is of the same value as the money with which the goods might be bought, and hence

This order or promise or right is what is usually called credit, and it is clearly seen that, although it is of a lower and inferior form, yet it is of the same general nature as money. And as we are in no way concerned with the materials of things; and since these rights, or orders, may be exchanged or bought and sold equally as well as any material chattels, they are called *numera, res, bona, merx* in Roman law; χρήματα, ἀγαθά, πράγματα, οἶκος in Greek law; goods, chattels and vendible commodities in English law; and therefore wealth in economics.

This phrase, with its Greek and Latin terms (and sundry additions *et cetero*), re-appears so frequently in *The Theory of Credit* that it becomes a burden or a laughing-stock according to the mood of the reader. In the work under review, the identity of credit and capital as to their general nature is maintained without qualification. At page 308 *et seq.*

the author makes an attack on J. S. Mill in the same terms as at pages 101 and 102 in the *Elements of Economics*, but with some amplification. It is important to examine Mr. Macleod's argument here, because it helps us to measure his eccentricities. He says:

We have first to show that Mill admits that personal credit is wealth. In accordance with the unanimous doctrine of ancient writers for 1300 years, Mill says (Preliminary Remarks, page 4): "Everything, therefore, forms a part of wealth which has purchasing power."

Then he says (Book III, ch. xi, sec. 3): "For credit though it is not pro-

ductive power is purchasing power. . . . Credit, in short, has the same purchasing power as money."

Now if Mill lays down the doctrine that everything which has purchasing power is wealth, and if he says that personal credit is purchasing power, then the necessary inference is that personal credit is wealth. That is a syllogism from which there is no escape.

The heading of one of Mill's chapters is "Of credit as a substitute for money." Now if one quantity can be a substitute for another it must be of the same general nature. If a person wants wine and cannot get it, he may put up with beer as a substitute; but a pair of shoes could never be a substitute for a glass of wine. Now if credit can be a substitute for money, credit must be of the same general nature as money. But money is an independent exchangeable quantity; hence credit must also be an independent exchangeable quantity.

And by the same reasoning a horse chestnut must be a chestnut horse. What Mill says in his "Preliminary Remarks" is this:

Money being an instrument of an important public and private purpose is rightly regarded as wealth; but everything else which serves any human purpose, and which nature does not afford gratuitously, is wealth also. To be wealthy is to have a large stock of useful articles or the means of purchasing them. Everything, therefore, forms a part of wealth which has a power of purchasing; for which anything useful or agreeable would be given in exchange.

Mr. Mill is here speaking of *things* that are material and tangible, that minister to human comfort and are not afforded gratuitously. Everything, *i.e.* every *such* thing, forms a part of purchasing power. Putting off for the moment the question whether credit is really a material and tangible thing that ministers to human comfort and is not afforded gratuitously, it is perfectly plain that Mill did not here intend to include either beliefs or lawsuits among the things which have purchasing power; therefore Mr. Macleod's syllogism comes to nothing.

We remark here that Mr. Macleod gives us with distressing prolixity the derivations and meanings of many words used by him, but nowhere applies his extensive learning to the derivation of the word credit. For example, on page 105, he gives us the derivation and meaning of the word production, "from the Latin *producere*, which means to lead or bring forth, or to expose for sale." Then by way of illustration we have quotations from Terence, Menedemus, Suetonius, Isaiah, King Lear, Julius Cæsar and Martin Chuzzlewit. Now the word credit is derived from the Latin *credo*, which means "I believe." Therefore credit signifies a *belief* on the part of a greater or less number of persons that some one person will pay what he has promised to pay or ought to pay. In one place in the volume we find a recognition of this meaning of the

rd, but only in order to stigmatize it as a "false concept" needing to be put to "summary execution" (page 316):

Credit, in popular language, is personal reputation which a person has, the consequence of which he can buy money or goods or labor, by giving in exchange for them a promise to pay at a future time.

A credit in law, commerce and economics is the right which one person has to compel another person, the debtor, to pay or do something.

Returning to the attack on Mill: we have seen that since Mill obviously did not intend to include mental operations or legal proceedings in the category of things which have purchasing power, Mr. Macleod's syllogism is no syllogism at all. The next proposition is that nothing can be a substitute for another thing unless it is "of the same general nature." Credit, therefore, being a substitute for money, must be of the same general nature as money. And since money is an independent exchangeable quantity, credit must be an independent exchangeable quantity. I have heard laboring men say that a tightening of the belt is a good substitute for food when food cannot be had—temporary, of course; but so also is credit only a temporary substitute for money, as Mr. Macleod admits.<sup>1</sup> Subsoil plowing is a good substitute for rain in a dry season. Sand is a good substitute for blotting-paper. Saccharin is a good substitute for sugar, but chemists tell us that they are not "of the same general nature," sugar being a food, while saccharin is not. Cases might be multiplied indefinitely to show that one thing used as a substitute for another is not necessarily "of the same general nature."

Mr. Macleod is a barrister, and he is deeply interested in the Roman law. This is his chief study. Whatever may be his aptitude for economics, it is evident that ancient law and the growth of jurisprudence are his chief preoccupation. Only thus can we account for the fundamental error of his *Theory of Credit*—the error of mixing law and economics together in an indistinguishable medley, withering and blighting to the human intellect. The key to his book and to his system is that credit is not a state of mind, a belief, a mental operation, but a right of action, and that a right of action is "an economic quantity," meaning this that it is something within the field and scope of economic science. Now a right of action represents legal authority, with which political economy has nothing whatever to do. Voluntariness is the very essence of economics. What men do because they are so inclined is its sole concern. When compulsion comes in, political economy as a science goes out. Political economy may have something to say, as an applied science, to executions in the hands of sheriffs, to imprisonment

<sup>1</sup> Credit is always created with the express intention of being, or of being capable of being, extinguished at a certain short definite time; p. 277.

for debt, to the institution of slavery, and even to the infliction of torture, but it is in the domain of *pure* science that Mr. Macleod thinks he is leading us. A theory is always in the domain of pure science.

But is it true that the right of action—the legal power to enforce payment, which legal power can be sold and transferred—is the essential part, or any part, of what is known universally as credit? We can answer this question by asking how much credit would be given, how many goods would be sold on credit, if the creditor supposed he would have to sue for his money. Is not this conception of credit really a contradiction of terms? A lends to B because he credits, or believes B, and thinks that he will not have to sue B. The sheriff does not make his appearance until the credit is found to be misplaced, unfounded, erroneous. It is only in a case of false credit that the right of action ever comes into play. The right of action is at most only ancillary to the credit. I know at this moment a large and successful dry goods house, of long standing, that gives credit extensively but never brings a suit for the collection of a debt. As to this firm, the trade in dry goods would go on all the same if all laws for the collection of debts were abolished. Credit would not be shortened in any degree at that shop. It is not a very extreme anticipation to look forward to a time when all laws for the collection of debts may be done away with. The premises of such a condition would imply no shortening of credit, but rather an extension of it. In such a case, of course, credits would be as salable as now, and rather more so, since by the hypothesis people would be more honest. All the phenomena, if there be any, which justify Mr. Macleod in thinking that credit is capital would remain in full force and play after all rights of action had disappeared. Is it necessary, at this late day, to argue that if I have a belief that A will return to me a wagon that I have lent him, in as good condition as when he took it, with something (say a pound of butter) for the use of it, my belief is another wagon, or is a part of a wagon, or an inferior wagon, something like a wheelbarrow? Mr. Macleod allows (page 293) that credit, while it is “a species of commodity or merchandise of the same nature as money,” is nevertheless “of an inferior order.” If my belief is a little wagon, where is it, and to whom does it belong? How much time would be required to double all the wagons and all the other movable wealth in the country in this way? And is there any limit to the amount of wealth a country may thus acquire?

We have touched upon Mr. Macleod's main contention. We have sought not to misunderstand it and especially not to misrepresent it. When we come to the details of his work we are bewildered with such paradoxes as “negative economic quantities” (page 40); “there is no such thing as absolute wealth” (page 28); “there is no such thing as

lute capital" (page 117). We expect every moment to come upon us Berkeley's metaphysical paradox, "there is no such thing as matter"; and if we should find it here, we should not be at all surprised. Mr. Macleod is not unfamiliar with pure economics, as his chapter on value sufficiently proves. The definition of value is as yet the *casus* of political economy. The evidence of this is that there is to-day any well-established doctrine of value. Mill began his treatment of it by saying that "there is nothing in the laws of value which awaits for the present or any future writer to clear up; the theory of the subject is complete." At the bottom of his own treatment of it, as of Ricardo's and, with some limitations, of Cairnes's, lies cost of production as the regulator of value. Macleod was among the first to discard cost of production altogether. Demand, he says, regulates value. He has not worked out the theory of value to any satisfactory conclusion. He has tried to dovetail it with his theory of credit, and in doing so has introduced as much confusion as he had previously got rid of. But that he is right in his main contention, that value depends on supply and demand and not on cost of production, is, I think, the prevailing belief of economists to-day.<sup>1</sup> What he has written here makes amends for some of his vagaries and gives him a claim to respectful attention. Both here and elsewhere, however, the book is more suggestive than scientific.

HORACE WHITE.

*Prison and Crime*; being a selection of reprinted papers on crime, Reformatories, *etc.*, by the late T. BARWICK LL. BAKER, Esq. Edited by HERBERT PHILIPS and EDMUND VERNEY. London and New York, Longmans, Green & Co., 1889. — 8vo, xxix, 299 pp.

*The Criminal*. By HAVELOCK ELLIS. Illustrated. New York, Scribner and Welford, 1890. — 8vo, viii, 337 pp.

The *rationale* of sentences for crime is a subject meriting the most careful study; yet so far as the average citizen or the average college graduate or the average lawyer knows, it has never been scientifically treated at all. The two works under consideration are useful, — absolutely, because of what they contain, and relatively, because of the great wealth of literature bearing upon the subject of which they treat.

Mr. Baker was an English country squire of the best sort. By the same man Professor von Holtzendorf, who was interested in these men, he is described as typical of the class to which he belonged. Baker was nearly interested in juvenile reformatories, and he wrote for various

See on this point Boehm-Bawerk, *Capital and Interest* (translation), pp. 133-141.

periodicals and associations a great number of articles and addresses on this and on other phases of reformatory and deterrent work. The volume before us is a collection of these scattered papers. Many of the papers included by the editor resemble one another too closely to be thus reprinted side by side. "Varied iteration" is a helpful device in popularizing ideas, and Mr. Baker was justified in treating the same subject in much the same way for two different papers or on two occasions widely separated; but the editors were not justified in including both letters or both addresses in this posthumous collection of his writings.

To the ordinary citizen, Mr. Baker's work will give a very stimulating idea of what one public-spirited citizen can accomplish. The book is free from the cant, but instinct with the spirit of philanthropy. In the reformatory under his charge, Mr. Baker interpreted "good conduct" on the part of the inmates to mean hard work; he considered the deterrent element in punishment to be of much more importance than the reformatory element, and the institutions managed on the principles he advocated were sometimes so successful as to render their continued existence unnecessary. The supply of juvenile criminals was cut off at its source.

Mr. Baker believed that the sentence for all ordinary first offences should be short and light, but that sentences for subsequent offences should be indeterminate, leaving the final discharge of the prisoner to be fixed by the prison managers instead of by the judge. The basis of all his views is to be found in the idea that sentences should be apportioned according to the character of the criminal, and not according to the crime. He saw clearly, however, that our present courts are not fitted either by training or practice to impose sentences according to the new and more rational criterion.

The leading thought in Mr. Ellis's book is also that we must study criminals rather than crimes, if we would deal effectively with the "criminal classes." When a "defence" of kleptomania was set up in a case of theft, an English judge is said to have observed: "Yes, that is what I am sent here to cure." "We need not hesitate," says Mr. Ellis, "to accept this conception of the functions of the court, provided always that the treatment is scientific, effectual and humane." He is inclined to agree with those who think that instead of "punishment" we should speak of "social reaction against crime."

While the author states that the book contains nothing original, yet it assuredly contains a great deal that is new, at any rate to such readers as are acquainted with only the English works dealing with the subject of which it treats. It is a *résumé* of the results thus far reached by the students of criminal anthropology of Italy, France, Germany, England

the United States, together with a view of the literature of the subject, and an interesting chapter on the treatment of the criminal, commoner abnormalities of the criminal, physical and psychical, are added; and the theory of atavism as an explanation of his anti-social tendencies receives constant notice, though it is not found to be as all-anatomy as Bellamy thinks it will be in his millennium.

Both of the authors under review urge as the strongest proof of the existence of our present system of dealing with criminals, the increasing number of recidivists or habitual offenders. "Each ten-times-convicted offender is a standing, glaring proof of the inefficiency of our present system to prevent offences," says Mr. Baker. Ellis states that more than forty per cent of the women committed to prison in Great Britain in 1888 had previously been convicted more than ten times. Of persons committed during the year 1887, 5686 of the men and 1400 of the women had been committed more than ten times. That same tendency to recidivism exists in this country can be ascertained by investigating the records of the nearest county jail. It is Mr. Ellis's opinion that, since the time of Howard, the countries of western Europe have been so busy reforming their prisons that they have neglected to reform their prisoners. The latter is obviously the harder task.

As far as I am aware, the science of criminology has been taken up for investigation and study in only one American university, though literary work in charities and corrections is done in several of them. The need for the scientific treatment of the subject is pressing, and it is to be hoped that these two interesting volumes will do much to attract the attention of students of social science, and to bring the matter to the notice of all thoughtful citizens.

A. G. WARNER.

*Eisenbahnreform.* Von EDUARD ENGEL. Jena, Herman Cosnoble, 1888. — 8vo, 219 pp.

It is many years since practical railway reformers derided the proposals of Brandon and Galt in England, and of Perrot in Germany. But the old idea has been taken up anew by Herr Engel, and is fast attracting attention in all quarters, owing to its practical realization in Hungary, and its projected adoption in other countries. Engel's book is all the more important because it is chiefly to the indefatigable author that the new experiments are due. The volume before us is in some sort the Bible of the new school of transportation enthusiasts.

The main ideas may be summarized as follows. The prevalent system of passenger fares is one based chiefly on distance. Concessions are made only on the very long distances, owing to competitive centres,



and on the very short distances, owing to the expansibility of the traffic. It is the medium and comparatively long distance traffic that suffers. The fares are so high and the accommodations so poor as to restrict immensely the possible advantages of a system of improved transportation. The reason of all this is the distance principle. It is accepted simply because it has come down unchanged from the methods of eighteenth century transportation. But the principle is vicious and illogical. It cannot be based in the value of the service, because a short ride may be far more valuable and important to a passenger than a long ride. We cannot possibly analyze or measure the desirability of a ride by its length. There is no connection between the two. The value to the passenger can be gauged only by considerations of a purely personal nature, which necessarily vary with each case. The mistake has arisen from confounding persons with commodities whose value is really changed by transportation. Just as the value of a letter or telegram is independent of the distance traversed, so is the value of a railway journey to the passenger. The distance tariff was once the universal rule for letter postage also, and Rowland Hill's proposals were treated with the same contemptuous incredulity as those of Perrot and Engel. But the successful introduction of penny postage showed the uselessness of the distance tariff. So it must be also with passenger fares. For the oft-repeated assertion that letters are different from passengers proves nothing. They are not different in the one controlling consideration — that the amount of the transportation does not proportionally change the value of things carried.

Secondly, the principle of distance cannot be based on the cost of service. For although it indeed costs more to transport a passenger a long than a short distance, the relation is not exactly proportional. Many of the expenses, in fact the large majority, are fixed expenses. It is utterly impossible to determine the cost of service for each individual service. All that can justly be demanded is that the average fare should exceed the cost of service of the average act of transportation, *i.e.* that the total receipts should exceed in a certain proportion the total expenses. Now this can be accomplished as well by a uniform fare as by a distance tariff. Again, the distance tariff system as actually practised loses sight of the fact that the cost of service decreases with the frequency of the transportation, and that low rates on a long distance may under certain conditions be more lucrative than high rates on a short distance. The amount of transportation as compared with its length seriously modifies the application of the cost of service theory.

Having shown that the distance principle is illogical and unnecessary, Herr Engel sets forth his own plan. He does not favor at this time the uniform fare, — which is perhaps too radical an innovation, — but the

of zone tariffs. As the telegraph charges are the same for all lines within a certain radius, but increase by stages beyond, so the passenger fares should be arranged by certain definite gradations according to zones, the fare being the same to all stations within the zone. The zone fares should be just low enough to produce the best profits, — and this point can be ascertained only by experiment. In connection with this many other reforms should be undertaken, such as greater speed, comfort, *etc.*, all of which would be not only possible but profitable to the railways. The book closes with a glowing picture of passenger transportation as it might be, compared with passenger transportation as it is.

The first point to be noticed is that Herr Engel does not, like some of his predecessors, apply his system to freight rates. Here he has nothing to find with the prevalent system, presumably because commodities do not change in value by transportation. But it is difficult to see the distinction in theory between rates and fares. A bushel of wheat does not cost any more in New York if it comes from Ohio, than if it comes from Nebraska. The value is the same to the purchaser. So that Herr Engel is in reality less logical than his predecessors. If the theory fails as to fares, it cannot be upheld as to rates. Passing over this inconsistency, it may be admitted that the zone tariff, as actually tried out during the past year, has been a success. It is true that the accompanying reforms advocated by Engel have not been adopted — as greater speed, increased comfort, more regularity, *etc.* But the experiment has been profitable because of the immense increase in passengers and the decrease in expenses.

Of course many of the conditions of the successful application of the system are lacking in this country. There is no unity of administration, no distinction of classes with such unprofitable deadweight in the upper classes, no such extravagance in station equipments and fixed expenses. The whole system will for a long time have only a theoretical value for us. But what the plan means when applied by a centralized administration can be seen approximately by comparing the system on the New York elevated road, with its low uniform fare, to the system of the London underground road, with its complicated and high zone tariff. In truth the principle of value of service has never been so highly developed in passenger as in freight traffic with us; and when our railway system will have ultimately settled down to its permanently stabilized form, the zone system may be as applicable and profitable as elsewhere. But that time is yet far distant. In the meanwhile Engel's book deserves serious consideration and study.

E. R. A. S.

*Die drei Bevölkerungsstufen.* Ein Versuch, die Ursachen für das Blühen und Altern der Völker nachzuweisen. Von GEORG HANSEN. München, J. Lindauer, 1889. — 8vo, viii, 407 pp.

We have in this volume a sociological study of great value. It presents in a broad and scientific way the preliminary data and provisional conclusions of an investigation that is beginning to engage well-equipped students in several countries, and that is destined to yield, in the near future, results of the deepest interest, whether regarded from the standpoint of pure theory or from that of practical policy. The problem is that of the population rate in its relation to social structure and function, and to the relative well-being of social classes. This is a larger question than the one associated with the name of Malthus. It has been apparent for some time to statisticians and to physicians familiar with the physiological reactions of modern city life, that the whole philosophy of Malthusianism would have to be reconstructed. The proposition that population tends to increase beyond subsistence must be split up into several more specific propositions, from each of which a series of most interesting corollaries may be derived.

As between city and country, birth rates and death rates are conspicuously different quantities, and the same is true as to the different social classes, namely, the agricultural or land-owning population, the brain workers or middle class, and the manual laborers. Dr. Hansen has wrought the existing knowledge on these points into a systematic sociological theory. The most important parts of his data are late statistics of German cities, and especially of Munich, showing that city populations are sustained and increased only by immigration from the country. The immediate inference from this fact is one that shatters a tacit assumption which a good many writers besides the socialists have made. The three social classes are not self-perpetuating. They do not stand side by side like unmingling races, but only mark different phases in the development of the same population. Only the land-owning class is permanent; the other two are constantly disappearing, only to be as constantly renewed.

The brain-working or middle class, including the mercantile, manufacturing and capitalist classes generally, are the overflow of the land-owning class. No country without a vigorous rural population, multiplying beyond the limits of a merely agricultural life, can have a progressive middle class, and with it such characteristic features of a high civilization as accumulating capital, industrial enterprises, education, literature and art. In like manner, the manual working or wages class, including all grades from skilled mechanics to day laborers, are the overflow of the middle and to some extent of the agricultural class.

Competition, intense and increasing, is the characteristic of middle-class life, and in the struggle thousands upon thousands are worsted. Those who have physical and moral vigor left become the wage earners ; others swell the ranks of crime, insanity and suicide. The third class, in its turn, multiplies beyond its opportunities for bread winning, and the overflow becomes this time the social residuum of tramps, paupers and outcasts. The tramp, in Dr. Hansen's view, is probably the least objectionable variety that the social residuum can develop, inasmuch as the tramp does not to any great extent perpetuate his kind. The worst possible variety is the sodden wretch that continues to breed in city slums, as in East London.

Each of the three classes acquires a distinctive nature. The second class is higher than the first, being recruited from it by a process of selection that takes out the energetic, the enterprising and the intellectually keen, whose special qualities are intensified by the competition of second-class life itself. The third class, on the other hand, is lower than the first in many points besides that of economic condition. It is lower especially in reserve or potential vigor. The second class has a low birth rate and a low rate of survival. Most burgher families die out. Business is conducted for the most part by self-made men. The rapidity with which old firms disappear is a matter of common observation and is attested by statistics. In the third class, marriage is frequent and early and the birth rate is high. Bodies are ill developed, as shown by English, French and German statistics of unfitness for military service. The conditions surrounding childhood are bad. Minds and characters are unformed. The energetic and really saving workingman can often rise to the second class, but for the most part the movement from the third class is into pauperism.

Dr. Hansen's is a mind that sees easily into complicated relationships that are baffling to students generally. He develops his thesis from many points of view. The three classes are studied not only as constituent elements of society and as factors in the state, but in their historical genesis. The phenomena they exhibit are examined also as seen in each of the larger nations separately. These chapters, amounting to a philosophy of history, are full of thoughtful reflections. Most deserving of sober consideration are the comments on the brilliant but short-lived civilizations that have shone by using up, not the interest merely, but the capital of population ; and on the United States, where the natural blossoming time has been hastened, and a result that might have been incomparably magnificent has in our author's judgment been ruined, by the hot-house forcing of tariff legislation. A concluding part on the duty of the state contains some recommendations not warranted by the facts as shown, but fresh and suggestive enough to be

very welcome to readers surfeited with Georgeism and Bellamyism. The things proven seem to be : that it is desirable to maintain the agricultural population in over-multiplying vigor, whereas, in fact, it tends towards sterility ; that it is desirable to perpetuate keen competition in the second class, whereas its members try in every way to limit competition ; and that it is desirable to raise the standard of life and check the increase of the third class, whereas its natural tendencies are towards a low standard and unlimited propagation.

It will be seen that this is no ordinary book. It takes a broader view of the social problem than economists, philanthropists and writers on statecraft are wont to take, and it brings forward practical considerations of a kind that optimistic reformers would prefer to wave out of sight. The chief defect of the work is one that its author recognizes : its statistical basis is not as broad as could be wished. Yet it is broad enough to build a working hypothesis on, and that is really all that Dr. Hansen claims to do. Two other criticisms may be added. Dr. Hansen's economic views are not always sound. He has an inadequate conception of the economic reaction of urban industries upon agriculture, whereby the production of raw materials, including food, is enormously increased. His ideas are, in fact, so far wrong that he condemns agricultural colonies of unemployed workmen on the ground that whenever a vagabond is put at work an industrious man is necessarily displaced ! The other criticism relates to the author's biological knowledge. Apparently he is not familiar with some of the most important recent work in physiology, showing the effect of education, intense competition and other forms of nervous strain, upon birth rate and the vitality of offspring. In this particular, the book is less satisfactory than the brilliant *Éducation et Hérité*, by the lamented M. Guyau. It is nevertheless a book that ought to be translated and put within easy reach of all classes of readers. It is exactly what is needed to open people's eyes to the true character of much of the current social-reform literature.

F. H. GIDDINGS.

*The Growth of Capital.* By ROBERT GIFFEN. London, George Bell and Sons, 1889. — 8vo, 169 pp.

Of all dry statistics, economic statistics are the driest. And when they cease to be dry, *i.e.* come into connection with living questions, — as for instance the statistics of accumulated wealth and its distribution, statistics of profits, of wages, *etc.*, — they are apt to become unmanageable. Mr. Giffen has attacked, with his customary thoroughness and lucidity, one of those problems, *viz.* that of the total capital or income-bearing wealth of Great Britain ; and he has not hesitated to make the

jury as fruitful as possible by comparing the present with the past, resources of Great Britain with those of other countries, the relation wealth-valuation to prices and the value of money, the burden of public debt, the relation of property and income, the proportion of different descriptions of property in the community, etc.

No estimate of the total wealth of a community can be termed certain or exact. It is impossible to ascertain by a census the wealth of all individuals, and then by adding the returns and subtracting mutual indebtedness, to get at the total wealth of the community. We can only estimate the total wealth on the basis of tax returns,—in the United States by the general property tax, in Great Britain by the income tax. The result will be trustworthy according as the valuation is more or less carefully made.

By methods which he fully explains and which seem trustworthy, Mr. Giffen estimates the total wealth of Great Britain in 1885 to have been £10,079,579,000. In 1875 it was £8,548,120,000, and in 1865 it was £7,113,000,000. The increase from 1865 to 1875 was 40 per cent; from 1875 to 1885 it was only 17.4 per cent. This startling decrease in the rate of accumulation is explained by the fall in prices during the latter period, which Mr. Giffen believes to have been at least 15 per cent; so that while property in things has increased as fast as ever, the valuation of these things in money shows a much lower rate of growth. This is particularly true of land, where income from rents has actually decreased, causing a corresponding decrease in the capitalized value. Land also occupies from decade to decade a relatively less important position among the items of national wealth in Great Britain. In 1690 land constituted 60 per cent of the total property of England; in 1800, 40 per cent; in 1865, 30 per cent; in 1875, 24 per cent; and in 1885, only 17 per cent. The last three figures refer to Great Britain.

The largest single item of property now is houses.

It is impossible in this place to give even a *résumé* of the other comparisons which the author draws,—the wealth of England at different periods; the relative wealth of England, Scotland and Ireland; the wealth of Great Britain compared with that of other countries. Many interesting side-topics are suggested, some of which the author promises to follow up in the future. Criticism may cause modification of some of his conclusions, but as things now stand Mr. Giffen has certainly won for himself an authoritative position on the question of statistics of wealth.

R. M. S.

*Les Progrès de la Science Économique depuis Adam Smith.*

Révision des doctrines économiques. Par MAURICE BLOCK, membre de l'Institut. Paris, Guillaumin, 1890. — 2 vols, 8vo, xii, 557, 598 pp.

The almost complete indifference of French economists to the recent reform movements in other countries has become a by-word. It explains in great part the discredit into which the authority of economic science has fallen in France,—a discredit similar to that noticeable on the other side of the channel a decade ago. In M. Block's "Progress of Economic Science since Adam Smith," we now have a work which in some respects challenges comparison with the best productions of recent times in any country.

M. Block has for years published in the *Journal des Économistes* a periodical review of the newest literature in all languages. As his name indicates, M. Block is of German descent; at all events he was from his earliest years thoroughly familiar with the German language. And it is precisely his complete acquaintance with German literature (which, however, does not in the least detract from his thoroughly French point of view and grace of style) that serves to give the work its peculiar value and distinguishing characteristics. For whatever we may think of them, it is from Germany and Austria that almost all recent impulses to reform in economics have come.

A word first as to the method of the work. At the beginning of each chapter M. Block gives in customary text-book form his own ideas on the subject in question. There is almost no statistical or historical matter, but simply the usual "philosophy" of the topic. This in itself would not attract any particular attention to the work. But the greater portion of each chapter is devoted to an account in smaller print of the views of eminent writers since Adam Smith on the point at issue. The authors are allowed to speak for themselves in extracts sometimes several pages in length, and M. Block then sums up, seeking to reconcile differences and to ascertain whether any real advance of doctrine is apparent. These parts of each chapter constitute the value of the work; for they afford the reader a clear, comprehensive and, it must be said, almost absolutely accurate account of the most important ideas advanced during the century. We have, in fact, a history of recent political economy, arranged not chronologically or by authors, but according to topics. After an introduction which treats of method, definitions and classification, we come to the first and in some respects the most important book—"Fundamental Notions." Here eight chapters treat successively of wants, goods, value, reason and sentiment, egoism and altruism, individualism and socialism, economic laws and the economic principle. The following four books discuss production, circulation, dis-



tribution and consumption of wealth in the customary subdivisions, and the work concludes with a summary of the progress made since Adam Smith. When we reflect that each chapter gives us a succinct *résumé* of the literature, it is evident that we have here a veritable compend of economic science. The work is not intended for beginners or laymen, but it will be a godsend to many whose library or linguistic attainments are limited.

And yet with all its array of interesting and valuable material the work is disappointing. This is mainly for the reason that M. Block is one of the most uncompromising adherents of the classical school. It is indeed true that M. Block objects to the word orthodox, contending that it is not a question of faith, but of knowledge; it is true that he objects to the terms classical school and Manchester school, saying that he is the adherent of no one man and of no one school, but only of the truth, wherever it may be found. All this is very praiseworthy, but the fact remains that M. Block, at what we trust is not yet the end of a long career, almost inevitably identifies the "truth" with the tenets of his earlier *confrères*. France, indeed, has never shared many of the cherished doctrines of the English orthodox school. The French economists, mainly through the common-sense influence of Say, refused from the very beginning to accept many of the mysteries of the Ricardian cult. The wage-fund doctrine, the Ricardian theory of profits and even the law of rent never found a ready acceptance with French writers. And yet the prevalent French political economy has been on the whole the most unbending and unyielding of all; and the study and reputation of the science have been the most unsatisfactory, for reasons which will soon be presented in another place by one of the French economists themselves. In so far as M. Block reflects this general condition,—and he is a representative Frenchman,—his work is disappointing.

A complete statement or criticism of M. Block's views would require an essay about as comprehensive as the work under review. There is room here only for a few general reflections.

The three main points of difference between the classical and the modern school are those of natural law, method and governmental interference. As to each of these questions there are extremists on both sides. It is of course undeniable that there are natural laws in economics, if by a natural law we mean that certain given causes under given conditions will produce certain results. Otherwise there would be no science at all; for the essential work of a science is to explain how and why certain facts necessarily lead to certain consequences. The claim of the extreme historical school that there are no laws in economics would convert the science into a mere mass of undigested



facts. It would rob us of the possibility of ever explaining or analyzing the nature of industrial society. The trouble with the classical school, however, was and is the misuse of the term natural. In their zeal to discover "natural" laws they forgot the limitations of time and condition. They reached results which were hypothetically true, but used them as if they were actually true. M. Block attempts to evade the issue by saying that the laws are eternal and immutable, but that their application is conditional. But the trouble with the orthodox writers is precisely that they confound the abstract law with the application. The real objection to the classical school was not so much that they set forth natural laws, as that they set forth false natural laws. As in the case of the vulgar adversary of "theorists"; what he really objects to is not "theory" (for theory is the basis of all practice), but false theory, which usurps a proud position and looks down on the others with contempt. So the modern economist also, in crying out against "natural laws," really wishes to voice his protest against certain assumed but really false laws. With the veritable economic laws, which are based on a broad foundation, and which are capable of lending themselves to the changing requirements of time, place and condition, the economist can have no issue. But many of the "natural laws" of the Physiocrats and the classical school had no such characteristics. And it was because of the chasm between the ideal law and the actual facts that the classical school came to grief.

Second, as to method. The classical school disdained history and comparison, because the science was to them an exact science like the mathematical sciences. It was so easy comparatively to reel off glittering generalities deduced mathematically from a few general principles, that almost every one with a logical bent felt himself competent to write a treatise on economics. The science, in fact, was fast becoming mere logomachy, out of touch with reality, out of sympathy with facts. The historical school called attention to the importance of laying a broader foundation. They desired to use history and comparison, not simply for verifying, but also for ascertaining principles. Certain extremists have indeed laid themselves open to the charge of being mere historians and not economists. The recent Austrian school has done well to emphasize this point. What is needed is a fusion of the two. The mere accumulation of facts is valueless (except for antiquarian purposes) unless it is made to elucidate some principle. But it is precisely through the analysis of the facts that the trained economist will often succeed in discovering the principle. A great genius will sometimes be able to evolve the law, as it were, intuitively. And we can certainly have no dispute with principles so discovered, if they stand the test of history and comparison. But it is undeniable that the historical method has

en widened the view, that it has been more fruitful of results and more influential in shaping practical legislation, and that it has given science an impulse which is painfully lacking in those countries still dominated by the older methods. The historical method requires, indeed, more patient study and often weary application; but if the substructure is more solid the edifice is apt to be more enduring. By all means let us have theory. If it is true, let us greet it gladly, whether the source be the deductive or the historical method. But let us not get that the historical and comparative method alone can furnish us all cases the means of testing the truth, and in some cases the means of ascertaining the truth. M. Block forgets this, and his argument, therefore, is correspondingly weak.

Third, as to the question of government interference. M. Block shows us clearly enough that the historical extremists have often exaggerated the traditional view of *laissez faire*. And he is not far wrong in asserting that the "ethical" school has frequently mistaken sentimentality for science. But the objections to the orthodox writers are nevertheless well grounded. The opposition to mediaeval interference with trade and industry which culminated in the Physiocrats and Adam Smith was certainly a healthy reaction. But the misapplication of the theories of individualism and liberty to conditions which obviously demanded some check upon growing injustice and industrial anarchy produced a natural counter-reaction. It was the excessive and often conscious optimism of the older school which led to socialism. And Block, struggle though he may, is still thoroughly imbued with this pervading optimism, this contentment with the actual, and impatience with the ideal. There is indeed some excuse for the French writers. In France, notwithstanding all the orthodox views, government has interfered perhaps more widely and less wisely than anywhere else. Its continual harping upon the beauties of actual conditions, and the fortunate attempt to separate the science which teaches what is from the art which teaches what ought to be, have resulted in the comparative sterility of French economics.

We are fortunate in America in possessing only a few extremists on either side. We are catholic enough to appreciate good work, whether it be done from the historical or from the abstract standpoint; and some of us at all events believe that a combination of the two is not only possible, but in reality the most desirable and logical means of progress.

Block does not agree with us; but let us not on that account forget that he has written a work of the first importance and of enduring value.

EDWIN R. A. SELIGMAN.

*Silver in Europe.* By S. DANA HORTON. London and New York, Macmillan & Co., 1890. — 8vo, xxii, 290 pp.

Mr. Horton has collected in this volume nine speeches and papers in favor of bimetallism, one of which discusses Secretary Windom's scheme, and another the "Pan-American dollar." As in previous books, the author maintains his established reputation as an indefatigable collector of materials bearing on the history of coinage, with the same plea for the rehabilitation of silver by international agreements, and the same eager advocacy of this scheme by arguments of a wholly *ex parte* character. More weight would be given these essays, could the reader be convinced that the author was trying to arrive at truth, rather than trying, lawyer-like, to gain his point by all the means in his power. One must not expect this, however; for he has evidently assumed the mantle of M. Cernuschi. The absolute confidence with which he takes up one monetary problem after another, tosses them lightly in an airy way, settles them decisively and forever, and then curls his lip at those who shake their heads, suggests too often that legerdemain which belongs to the pursuit of one idea.

The reader is constantly asking why — if the complexities of money and prices are after all so simple and so easily explained — there can be any differences of opinion. In the end, he must be convinced that Mr. Horton is so absorbed in his one idea that he gives weight to nothing else, and can see nothing which militates against it. He goes farther even than this. He arrogantly dismisses with a general denial all the elaborate data showing special reasons for the fall in prices of commodities (page 76), and pluckily adheres to the explanation to be found in the scarcity of metallic money due to the demonetization of silver in 1873. As if any informed economist would assert that the level of prices depends solely on the *quantity* of metallic money! Here is the head and front of the author's offending. He makes such statements as this (page 84): "To whatever condition of things the phrase 'contraction of the currency' may be applied, an increase of the supply of gold money must serve as the opposite and negation of it" (*cf.* also page 91); and yet he says (page 89): "Cash payments are but a fraction of the totality of transactions." His general conclusion, however, depends on the fundamental proposition that the world needs more legal metallic money, — else why need he dread the supposed scarcity of gold, or sigh for more silver coinage? No doubt he could use another book to answer this question; but he would thereby repeat a characteristic which frequently appears in these pages. He would spin so fine a cobweb of his argument that it could not be seen.

It would put even Miss Philippa Fawcett to her trumps to see the

ical *sequitur* between such statements as the following (page 97 and page 113):

Whence comes the strange parity between cheap bronze pennies, lighter shillings, solid gold sovereigns and paper promises to pay five or a hundred or a thousand pounds? Evidently the English lake is well emarked around by English law. If analogous enclosure be given to silver gold money by the monetary laws of nations, a similar level of parity [*sic*] be produced and maintained. This can be done by giving two metals ality before the law in a strong body of nations.

The only possible inference from this reference to the bronze, silver and gold coinage of Great Britain (which limits the coinage and legal tender power of bronze and silver money) is that the "strong body of nations" must limit the coinage and restrict the legal tender power of silver.

Although it is necessary to point out such puzzling statements (see page 46), yet there can be no desire to belittle Mr. Horton's indefatigable industry and zeal. He has made accessible many important documents and papers, especially in the *Report on the Monetary Conference of 1878*. Still one cannot help believing that the work of such talented bimetallists as Cernuschi and Horton has given support and impetus to the vagaries of the American "silver man," in whose schemes these gentlemen see the evil as well as any one else, — the misfortune being that few people distinguish between international bimetallism and the theory now rampant in Congress, that we must have silver money and hence ought to have silver.

J. LAURENCE LAUGHLIN.

*Adam Smith, der Begründer der modernen Nationalökonomie: sein Leben und seine Schriften.* Von DR. KARL WALCKER. Berlin, Otto Liebmann, 1890. — 8vo, 50 pp.

*Adam Smith und der Eigennutz.* Eine Untersuchung über die philosophischen Grundlagen der älteren Nationalökonomie. Von DR. RICHARD ZEYSS. Tübingen, Laupp'sche Buchhandlung, 1889. — 8vo, 121 pp.

So much has already been written about Adam Smith that it seems pity to tempt the reader with books which profess to say something new, but which in reality only work over again the old material. I regret to say that the two monographs before us fall within this category. The essay of Dr. Walcker concerns itself chiefly with Smith's life. A careful reading fails to disclose in it a single important addition to what has been given by Stewart, Burton, Bagehot, Leser and Haldane on the

same subject. The only new feature consists in those curious literary characteristics with which all readers of Dr. Walcker's numerous works are acquainted, and which have in part contributed to keeping him a mere *privat docent* for these many years. A great show of bibliographical erudition and a painful lack of broad and sane views are not sufficient to make a valuable book.

The thesis of Dr. Zeyss, on the other hand, is that of a young graduate who tries his hand at the philosophy of the subject. He discusses first Smith's general moral theory, then the idea of self-interest as found in the *Theory of Moral Sentiments*, and finally the theory of self-interest as expounded in the *Wealth of Nations*. Although the author evinces great familiarity with the literature of the subject, and successfully controverts many of the extremists, it cannot be said that he has materially added to the conception or criticism of Knies. The one good point that Zeyss makes is that there is no such chasm as has been generally believed between Smith's two works. Already in the *Theory of Moral Sentiments* the principle of self-interest is expounded, as limited by the ideas of justice; and in the *Wealth of Nations* this same principle is simply applied to the economic sphere. Dr. Zeyss finds fault with Smith's conception as being too optimistic, and as mechanical rather than organic. But the whole discussion will be more interesting to the philosopher than to the economist.

E. R. A. S.

*L'Occupation des territoires sans maître.* Par CH. SALOMON, docteur en droit. Paris, A. Giard, 1889. — 400 pp.

To the general reader the title of this book will not disclose either the scope or the main purpose of its contents. *L'acquisition des territoires* would more nearly have indicated what the author treats. In the first place, he undertakes to give an account of all the methods by which nations have enlarged their domains, and the assumptions of right or of power upon which they have proceeded. From this point of view, the title is too narrow. In the second place, the larger part of the book is devoted to the discussion of the question whether states commonly called civilized may rightfully seize and occupy territories inhabited by aboriginal peoples. To say that such regions are "*territoire sans maître*" appears to recognize the doctrine which the land-grabbing nations of the earth act upon, but which the author condemns. This, however, is the technical term under which we constantly find the subject treated in French books and periodicals.

The last four hundred years have witnessed various transformations of the theories upon which national cupidity of territorial extension has

ght to justify itself; but there has been in this time little, if any, abatement in the intensity of the passion. In the days of Columbus, new lands of conquest were sought in the name of religion. Pious princes ordered expeditions of discovery in order that heathen peoples might be brought under the sway of Christianity, and the church in turn graciously ceded the territory so discovered to the princely promoters of the enterprise. The accounts of this devout era show, however, that the accidental discovery of gold and silver deposits was heard with some degree of interest and satisfaction; and, indeed, not all the mineral wealth then contributed by the new world to the old was taken directly from the ground. The heathen parted with their hoarded treasure in various forms, as well as with their territory and mines. At a later period, the expeditions of discovery were conducted for the avowed purpose of national aggrandizement.

The present age has seen the rise and progress of a new era in territorial acquisition. Less pious than the discoverers of the fourteenth and fifteenth centuries, and less ready to avow their motives than the adventurers of the succeeding period, the territorial acquirers of the present invoke the name of "civilization." As the possessors and dispensers of this blessing, they become the custodians of the uncivilized man and the owners of his land. That they disclose a decided commercial spirit, and assert their principles in places where gold and silver and precious stones are to be found, is not to be set down against them; for commerce and civilization go hand in hand, though with the former always a little in the lead to point the way. But it cannot be denied that the contribution which civilization exacts from its beneficiaries is often in excess of what it gives them; nor can it be maintained that its methods are always above suspicion. Sometimes it becomes involved in inconsistencies. If, in the exercise of forbearance, it treats with the original people in the first instance as independent and autonomous, the result is almost invariably the same. It is found that the natives do not observe the treaties; that they exhibit a spirit of obstinacy in clinging to their ancient forms and customs; that they do not regard with much favor as they ought the efforts to enlighten them. Under these circumstances irritating differences are sure to arise, and the point of separation is soon reached. Whether the uncivilized man feels himself goaded to retaliation, or his civilized guardian deems it a duty to punish him for his contumacy, the result of the ensuing conflict is usually the complete triumph of civilization. In such case the new order takes measures to insure its supremacy, and this is generally accomplished by the effective method of annexation.

The present century has witnessed the rapid extinction of independent native communities. In the Pacific Ocean the work has been nearly

completed, Samoa and Hawaii remaining as almost the last abodes of aboriginal sovereignty. These, it may be said, have been preserved only through the intervention of the United States. All the rest are to-day under the sovereignty of European powers. The same situation is rapidly approaching in Africa.

That the result has been a gain to the material wealth of the world cannot be doubted. Whether, if the methods by which the result has been brought about were faithfully recounted, civilization would have cause for unmingled congratulation, is another question. To the native races, the approach of civilization has frequently meant not only the loss of liberty and property, but also corruption and enfeeblement, if not destruction. Instruction in religion and morality has been more than counteracted by the importation of vice and disease. Firearms and liquor have been staple considerations for the conveyance of land, and the passions of the natives have been fostered for the sake of their despoilment and subjection. Such has been the contribution of civilization to aboriginal peoples, and such is the story of *L'Occupation des territoires sans maître*.

JOHN BASSETT MOORE.

*History of the United States during the Administrations of Thomas Jefferson.* By HENRY ADAMS. New York, Charles Scribner's Sons, 1889-90. — 4 volumes, 446, 456, 471, 500 pp.

It is rarely that an opportunity is offered for bestowing unlimited praise upon an historical work that covers eight years of a nation's life, crowded with incident, complicated with delicate entanglements of diplomatic relations and colored by partisan and factional temper. For the four volumes of Mr. Adams's history we have nothing but praise, whether we judge it from its style or from its matter. Mr. Adams's experience as college tutor, as editor of the old *North American Review*, as a biographer, and as a close student of American history, has brought him to the task just completed with faculties trained and specialized for performing it well. His style is clear and spirited, — concise almost to a fault, for at times it approaches baldness. His judgment is excellent; the thread of the narrative is never broken; there is no padding with digressions — no striving after effect; and he shows a complete mastery of his subject, — a mastery all the more noticeable from the absence of partisanship.

Jefferson is displayed in these volumes as he has never been displayed before, and yet only such material is used as is furnished by Jefferson himself. This in itself is an achievement of no small difficulty, for few writers — and Jefferson committed everything to paper — were so

ll of contradictions and inconsistency. As Mr. Adams himself says : Jefferson could be painted only touch by touch, with a fine pencil, and the perfection of the likeness depended upon the shifting and uncertain flicker of its semi-transparent shadows." It is only by following the an almost day by day that a true picture of his character can be drawn, and in this lies what may be called the one weak point in Mr. Adams's work. For Jefferson became President after a schooling in revolutionary days, under the Confederation and in Washington's cabinet. He assumed power with fully developed political beliefs, intent upon beginning a new political era, and with a following that he had carefully nursed into a party which looked to him as its leader. In the eight years of his presidency he abandoned one by one his most cherished doctrines, sacrificed some of his warmest supporters, produced dissensions in his party, and accepted diplomatic insults and defeats with the calm resignation of an Eastern fatalist. Mr. Adams has described all of this with a master's hand ; but it is a matter for regret that he could not also have described with as great minuteness the development of Jefferson's beliefs prior to his election. This is touched upon in certain cases, but the picture is still incomplete.

It would be impossible to notice the many interesting points raised by Mr. Adams, whether of domestic policy or of foreign relations. Jefferson's cabinet was dominated by the influence of Gallatin, who appears as the balance wheel of the administrative machinery. Madison was too much like Jefferson to offer much obstruction to his curious theories ; and had the two men been allowed to work their will, unrestrained by the close economy and hard sense of Gallatin, the administration would have become even more conspicuous than it was for its unders. It did not escape serious accidents. In his first message Jefferson began his career as a Federalist, and the responsibilities of power seem to have postponed indefinitely the political revolution he had promised to inaugurate. At first this wandering from the paths of republicanism gave occasion to nothing but comment ; but as step by step the chosen leader of the people led his following into the Federalist camp, sacrificing his own record to do it, a stout opposition appeared to his own party, headed by John Randolph. Jefferson, however, was too strong for his adversaries. The failure to impeach Chase, the implication in the conspiracy of Burr and Wilkinson, and the stupid blunder of the embargo, were certainly not calculated to inspire confidence in the sober judgment of the President. Yet he could afford to laugh as heartily at the assaults of Randolph as he did at the attempt of the extreme Federalists to divide the Union. It was the success of Gallatin's finance that overshadowed all the failures in domestic policy.

The good fortune of Jefferson in foreign relations again has kin



cloaked his shortcomings. The archives of France, England and Spain have supplied Mr. Adams with much new and valuable material, and in describing the course of European diplomacy his admirable style and method are conspicuous. Here are developed the important part that San Domingo played in the safety of the United States, the many and generally selfish vacillations of the French and Spanish courts, seeking to use the emissaries of Jefferson as tools for their own purposes, the coquetting of the powers with one another to keep the United States in suspense and inactivity, and the complete failure of Jefferson's cabinet to meet the exigency with an honest and fearless policy. The ministers and agents of Jefferson were defeated in France, in Spain and in Great Britain; while the ministers of these powers at Washington had many things to complain of, and not the least of them was their inability to understand the President and his Secretary of State. The letters of these representatives are very curious, and the well-known incident of the heelless slippers gives an opportunity for one of the touches of humor that occasionally add zest to Mr. Adams's pages. The author thinks that it would have been better for Madison to notify Merry beforehand that he would not be expected to wear full dress; "in that case the British minister might have complimented Jefferson by himself appearing in slippers without heels."

The crowning success of Jefferson's foreign policy, which served to blind the people to the many defeats it sustained, was the purchase and annexation of Louisiana. This was due rather to the military necessities of Napoleon than to the diplomacy of Jefferson's agents, but the success was none the less brilliant. Nor was the effect upon Jefferson's political creed the less startling.

Within three years of his inauguration Jefferson bought a foreign colony without its consent and against its will, annexed it to the United States by an act which he said made blank paper of the constitution; and then he who had found his predecessors too monarchical, and the constitution too liberal in powers, — he who had nearly dissolved the bonds of society rather than allow his predecessor to order a dangerous alien out of the country in a time of threatened war, — made himself monarch of the new territory and wielded over it, against its protests, the powers of its old kings. [II. 130.]

The purchase of Louisiana was accomplished when Jefferson was in full tide of popularity. The second term of his presidency can show little but failures of policy. The Burr conspiracy and the commercial hostility of England are the leading features. The one ended in a collapse that barely saved the President from a very embarrassing complication; the other ended in a temporary blunder, but eventually in the war of 1812. The attempt of Jefferson to "entail" his policy on his chosen successor, Madison, was successfully accomplished, but

the expense of Monroe, and, indeed, of the country; for the entanglement of our relations with England, due to Jefferson's wish for universal peace, could only be resolved by war. "Peaceable coercion," when employed on such powers as England and France, was the quintessence of impotency, and the means used, the embargo, on which it rested Jefferson's reputation as a "philosophic legislator," only proved a fact. Jefferson retired from office fully conscious that his popularity had been severely injured, and that he had bequeathed to Madison the many perplexities and dangers that his well-meant though mistaken policy had produced. As Randolph said: "Never has there been any administration which went out of office and left the nation in a state so deplorable and calamitous."

In this work we have for the first time a full-length portrait of Jefferson, drawn by a master hand; and it is to be hoped that the volume so deservedly given to these volumes will induce Mr. Adams to continue the work. It would be difficult to find an American history that can approach it in completeness and in judicial tone.

WORTHINGTON CHAUNCEY FORD.

*John Jay.* By GEORGE PELLEW. [American Statesmen Series.] Boston, Houghton, Mifflin & Co., 1890. — 12mo, 374 pp.

The first chief justice of the Supreme Court of the United States was born in New York city in 1745, was educated at King's College, was admitted to the bar at the age of twenty-three, and married into the Livingston family in 1774. Immediately after his marriage he entered public life as a member of the committee of fifty chosen by the citizens of New York to consider the means necessary for repelling the British aggression measures of that period. He became the presiding officer of Congress under the Confederation; went upon an unsuccessful mission to the court of Spain; was one of the negotiators of peace at the close of the Revolution, and finally was offered by Washington the choice of appointments in the gift of the President. That he elected to be the head of the federal judiciary is a significant comment upon the new government about to be inaugurated, and must have been, as we look upon it this distance of time, a favorable augury for the third department of government then first to be established.

John Jay was twenty-eight years old when he first accepted public office; for twenty-eight years he served his state and country; and then for a third period of twenty-eight years he remained entirely in private life. The first and third of these periods the present volume devotes but a few pages all told, while over three hundred are given up to the acts

of the statesman period. This allotment of space was perhaps inevitable, but it is to be regretted that its spirit pervades the entire work. The man Jay is kept quite too far in the background, while his acts as an officer or judge or diplomatist are set forth much after the style of a chronicle; so that Mr. Pellew seems not to have been able — perhaps he has not attempted — to make graphic or interesting the scenes in which Jay took part. His hero is an automaton, moving through a certain course with a mechanical exactness that excites astonishment at the unknown genius which controls the mechanism. Yet Jay was, we know, one of the most human of beings. In his letters to his wife (we wish for fuller extracts), in his correspondence while minister abroad, of which we have here but the skeleton, in his treatment of his slaves, here dismissed in half a paragraph, we see the living, feeling man, in spite of the unconscious skill with which this being is here concealed in the cold, clear, calculating statesman.

As a biography, then, this work unwittingly does injustice to its subject. As a history it is deserving of more consideration; for its author has unquestionably shown diligence in his researches, and has made use of some sources not before accessible, while not neglecting the standard works. Yet it is not the whole of writing history to state facts; and it is just on this point that this work is disappointing. The number of facts given in its pages is totally out of proportion to the amount of setting given to those facts. No fact legitimately forms part of a written history unless correlated with a cause or an effect or both. That the court met and adjourned for lack of a quorum, or that the post-horses were engaged for the Comte du Nord (with whose acquaintance we are otherwise not honored) — this is not history.

“Local color” is a much-abused element in modern writing, but its desirability is only too strongly shown in this volume. Jay spends over two years in Spain, yet no account is given of the nature of the court from which he sought recognition; he is elected president of Congress when but three days a member, but scarcely a hint is given of the reasons for so astonishing a selection. A similar mistake is the introduction of the names (not quite the personalities) of men not to-day known to the average reader, without a word to explain their positions or characters or even their nationality. Thus Marbois, Vergennes, Luzerne and Gérard are spoken of with the same easy familiarity that we are accustomed to use in mentioning Washington, Jefferson, Hamilton or Jay. To the reader not already acquainted with the history of the diplomacy of the Revolution this must be confusing in the extreme.

Nevertheless, Mr. Pellew has gathered, in convenient and accessible form, much of the history of the times of Jay, and has given a succinct account of so much of our formative period as Jay took part in, and

was not a little. Especially valuable are the chapters upon the peace negotiations; while this anecdote, preserved by family tradition, is a useful commentary on some notions now current as to the "forebears": "'Jay,' said Gouverneur Morris some thirty years afterward 'Jay,' he ejaculated, 'what a set of d——d scoundrels we had in that second Congress!' 'Yes,' said Jay, 'that we had'; and he knocked the ashes from his pipe."

HENRY HARMON NEILL.

• *l'organisation des Conseils Généraux.* Par GEORGES DETHAN. Paris, A. Giard, 1889.—331 pp.

This work is somewhat disappointing. As its title indicates, it is devoted to the organization of the general councils of the French departments. Nothing whatever is said, however, about the functions of these bodies. It is not therefore by any means a complete discussion of this, one of the most important of French local authorities. But perhaps it is ungracious to criticize a book for not being what it does not pretend to be or what its author never intended to make it. Dr. Dethan purposed merely to give a thorough and detailed description of the organization of the general council, and this he has done. The first part of the work is devoted to the "General Councils before 1871," the date of the law governing them at the present time. This is followed by a discussion of the law of 1871, the reasons for its passage, and an outline of the important changes made by it. The other chapters of the work are given up to a detailed description of the organization of the present general councils and their permanent committees, the departmental commissions, with the full references to the decisions of the council of state and the department of the Interior relative to the workings of the present law.

The most interesting part of the work is the introductory portion, dealing with the attempt made under the *ancien régime* to form local legislative and administrative bodies in the provinces. In these assemblies, whose formation was due to Necker, are to be found the germs of the present general councils. Not only, however, are the general councils to be traced back to the provincial assemblies of Necker, but the departmental commissions also, founded finally almost a century after Necker lived, are derived from one of the features of his plan, the *commission intermédiaire*.

Another interesting portion of the book is that devoted to the analysis of the various plans presented to the National Assembly of 1871. Whatever differences may have existed between these plans, they all were actuated by the same idea, *viz.* decentralization. So great was the demand of all for more local freedom than was granted by the inst

tions of the second empire, that the committee to which these plans were submitted was called the *commission de décentralisation*. At the same time, however, the men who guided the reform were quite conservative in spirit. The result, therefore, was simply farther progress in the way marked out by the second empire in the law of 1866. The only important departure from that general plan was the formation of the departmental commission — a permanent representative of the general council — which was to exercise a local control over the agent of the central government in the department, *viz.* the prefect. The whole progress of this movement and the details of the various reform plans are given by Dr. Dethan with just sufficient detail to keep this part of the work interesting to the general reader while making it profitable as well to the student. The latter part of the work, though not so interesting, on account of the greater detail which the conditions of the task have made necessary, is still most valuable to any one desiring to know all that is to be known about the general councils. But nothing beyond the information in regard to their organization must be expected.

F. J. G.

*Des Hautes Cours Politiques en France et à l'étranger.* Par ADOLPHE-ÉMILE LAIR. Paris, Ernest Thorin, 1889. — xxiv, 436 pp.

There are in France so many political parties with radically different views as to the kind of government best for the country — parties which feel little hesitation in attempting to make the changes they regard as advisable — that the question of the best method of punishing what are called *attentats contre la sûreté de l'État* is a serious one. The question is one which every government existing during this century has had to consider. The turbulent character of the people at the time of the French revolution made it seem advisable to form a special tribunal for the punishment of all such attempts. Each of the governments which have succeeded one another with such rapidity since 1789 has endeavored to solve this problem in its own way, and most of the solutions arrived at have agreed in this one particular, that the political crime of attempting to overthrow the existing government should be excluded from the jurisdiction of the ordinary courts. How the special court which this way of solving the question made necessary should be formed, seemed so important a question to the Paris faculty of law, that they provided in 1884 that the subject of the Rossi prize should be *Des Hautes Cours Politiques dans les temps modernes*. M. Adolphe-Émile Lair, formerly a justice of the court of appeal at Angers, was the successful competitor for the prize, his dissertation being crowned by the faculty of law. This dissertation is the basis of the book before us.

M. Lair has profited by the criticisms and suggestions made at the time the prize was awarded to him and has also enlarged considerably the compass of his original dissertation, treating in his book of the *hautes mœurs politiques* not only in modern but also in earlier times so far as to include a description of the institutions of ancient Rome and of Europe in the middle ages. His discussion of the courts in France for the trial of treason and similar political offences is from both the historical and the legal point of view remarkably thorough—so thorough as to become, in the case of the revolutionary governments between 1789 and 1815, somewhat tedious to the foreign reader. What is of particular interest, however, is the admirable work which has been done in bringing together the institutions of all important modern countries. Here again the author has been lured by an overweening desire for thoroughness into a pit into which so many students of comparative institutions fall. It is doubtful whether the institutions of the Orange Free State or of Ireland offer an example which can be copied with advantage by any of the great states of the present day. In this portion of the work the author seems to have relied more than is advisable upon secondary sources of information,—a failing which can be excused only by the well-known lack in France of the original materials for the study of foreign institutions. One result is incompleteness of treatment in many instances; for example, in the portion of the work devoted to the law of the United States. Almost all the author seems to know of our method of trying treason or of impeaching officers is derived from a study of the constitution and from the reading of one or two French histories of this country. His knowledge of our various state trials is scanty; the only one he alludes to is the impeachment of General Belknap, such an important trial as that of President Johnson not even being mentioned.

The general principles, however, which M. Lair derives from his work on the institutions of foreign countries are valuable. He finds that in the organization of the tribunal for the trial of political crimes three systems have been adopted. In the first the jurisdiction belongs to the legislature; in the second, to the highest ordinary court in the land; in the third, to a special court constituted to assume it. In a few cases, finally, a mixed system is found. From the point of view of the punishment which is meted out, two classes may be distinguished, according as conviction is followed simply by removal from and future disqualification for office, or by some further criminal penalty. The author is convinced, it would seem, from the special study which he has made of this subject, that the formation of a special court is necessary largely because of the inability of the ordinary courts, in times of great political excitement, to suppress political conspiracies and

convict offenders in high station. But at the same time that he demands the formation of a special court for the trial of political offences, he insists that the court shall be so formed as to be as far as possible free from political influences, and that its jurisdiction shall be exactly defined by law, so as to leave little or no discretion in applying the penalties.

While M. Lair devotes the larger part of his work to the discussion of the punishment of political crimes, he treats also of the impeachment of state officers for misdemeanors other than political, *i.e.* of the final control which the legislature may exercise over the executive. The attempt to treat two somewhat different subjects at the same time is often confusing. Thus the author's criticism of the system in vogue in the United States is really unfounded, because our method of impeachment is designed to give the legislature a control over the executive rather than to provide a means for the punishment of political crimes. Political crimes are included in the ordinary criminal law, and are punished by the ordinary courts, with the single exception of those committed by officers of state. This fact seems to be overlooked by M. Lair. Like so many French books, this volume is not provided with any index, and is on that account less acceptable as a book of reference.

F. J. G.

*Twelve English Statesmen: William the Conqueror.* By EDWARD A. FREEMAN. 200 pp. — *Henry the Second.* By Mrs. J. R. GREEN. 224 pp. — *Henry the Seventh.* By JAMES GAIRDNER. 219 pp. London and New York, Macmillan & Co., 1888-1889.

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ks. There is evidence of an artistic literary sense which has guided historian's pen. Mr. Freeman's ideas of William the Conqueror are familiar to need comment. They are put here in the author's best e. Mrs. Green's treatment of Henry II does full justice to that high-pered, hard-headed and industrious monarch. She is as thoroughly vinced of his importance to English history as Mr. Freeman is of liam's. Witness two rather conflicting statements, by Mr. Freeman ge 2) and Mrs. Green (page 1) respectively :

That the history of England for the last eight hundred years has been t it has been has largely come of the personal character of a single man illiam, of course].

The history [of the English people] as we know it and the mode of gov- nent which has actually grown up among us is in fact due to the genius he great king by whose will England was guided from 1154 to 1189.

Mr. Gairdner's characterization of the first Tudor sovereign is rather re favorable to Henry's personal attractiveness than that generally rent. This monograph, like Mrs. Green's, derives a delicious flavor n the quaint sayings of the old chroniclers with which it is occa- ually embellished.

Excellent paper and print give an additional charm to what must be nounced so far a delightful and valuable series.

W. A. D.

*vérité sur l'expédition du Mexique, d'après les documents*  
édits de ERNEST LOUET, payeur en chef du corps expéditionnaire :  
*Révé d'Empire*. Troisième édition. 12mo, vii, 338 pp. — *L'Empire*  
*le Maximilien*. Troisième édition. 339 pp. Par PAUL GAULOT.  
Paris, Paul Ollendorff, 1889-1890.

The story has often been told of the astounding scheme of Napoleon to establish a foreign prince upon the throne of Mexico, and by uns of French arms and diplomacy to turn the tide of civilization commerce in favor of the Latin races and to the particular advan- : of the Emperor of the French. Comte de Kératry, who served Mexico under Bazaine and resigned, in 1865, when he saw the true racter of the expedition, shortly afterwards wrote a series of articles the *Revue contemporaine* which attracted great attention on account is disclosures and the scope of his views. These articles were put ook form in 1867. The following year Clément Duvernois pub- ed a volume called *L'Intervention Française au Mexique*, which in was but little more than a well-edited text of the most important uments then known in connection with the expedition. The first



thoroughly historical treatment of the subject was given in two octavo volumes, published in 1869, called *Historia de la Intervencion Francesa*, by E. Lefèvre, editor of the *Tribune de Méjico*. Lefèvre covered the whole period of Mexican independence and brought plainly into view the traits of the factions whose violent contentions ultimately became the occasion of intervention. He was also the first to use extensively the archives which were left by Maximilian. Although manifesting the influence of contemporary feeling, his volumes investigated the whole field so well that but few mysteries remained in it.

The volumes which are the subject of this notice appear under peculiar circumstances. Ernest Louet, who was in Mexico as paymaster to the *corps expéditionnaire*, conceived the idea of writing a complete history of the intervention on the basis of all the facts which could be gathered from the known official and private documents and from all the obtainable private correspondence of those who were prominent in the movement. His exhaustive search was rewarded by the discovery of many confidential letters of Napoleon III, of his Minister of War, Randon, of the Emperor Maximilian, and of others. Thus he was the first to hear all the evidence in the great case in diplomacy. Unfortunately Louet died before the literary part of his task was completed. Paul Gaulot has undertaken to finish the work. Under these circumstances it would not be fair to hold either of the writers responsible for the final product, or even for any particular part of it; for there is nothing to indicate where the work of the one ended and that of the other began.

The main justification for the publication in its present form is that it contains a number of important documents which otherwise might long remain unknown to students of this period. This new material, however, makes no very startling revelations; its chief value consists in the corroboration it affords to some of the most damaging inferences of Napoleon's keenest contemporary critics. As is well known, Napoleon continued to reiterate to the United States, throughout the entire period of intervention, that he had no desire to interfere with the people of Mexico in the formation of a government. Of course no one believed that he was sincere. Here we are furnished with copies of his confidential correspondence in which he gives his military and diplomatic representatives specific instructions as to how to proceed to form a government in order to satisfy certain purposes of his own. A single sentence from a letter of September 12, 1863, to General Bazaine is only one of many similar cases: "Quoi-qu'il y ait un gouvernement provisoire, mesure indispensable (afin d'éloigner la pensée que je voulais garder le Mexique), le général français a le devoir de tant empêcher ou de tant décider par son influence." (*Rêve d'Empire*, page 168.) In fact

ing was left to the decision of the Mexican people, and even Maximilian constantly remained a creature of Napoleon's shifting plans. Maximilian is treated in these volumes in a very philosophical spirit; but although his weaknesses are apparent, one cannot but sympathize with his fine sentiments and with the high purposes of his reign. Except in the first part of the earlier volume, the character of Napoleon has not been painted in colors that are sufficiently strong and positive. The reactionary and impractical struggles of the Clerical party, vigorously assisted by the Pope, are described with fulness and perspicacity. Unfortunately the authors seem to have given no special study to the diplomatic relations which France had with both the United States and Confederate States in connection with the occupation of Mexico. In a third volume, *Fin d'Empire*, is promised, it is to be hoped that these relations — which were of the first importance to the diplomacy and to the ultimate success or failure of Napoleon's scheme — will not be confined to the few pages of general description given in the volumes already published.

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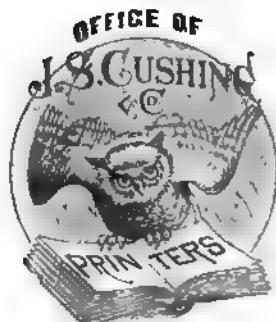
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## HENRY C. CAREY AND HIS SOCIAL SYSTEM.

### I. *The Development of the Man.*

THE economic education of Henry C. Carey began early in his life. The son of a poor Irish immigrant, he was from his ninth year onward associated with his father in business, and was widely known to the trade as "the little bookseller." If the practice of a successful domestic economy be any preparation for a correct appreciation of political economy, the Careys gave promise of becoming economists of no mean order. Their firm was deemed the most enterprising publishing house in the country, and their success was proportional to their efforts. All the books which were selected for publication, or for re-publication, passed through the younger Carey's hands, and the most of them were read by him. This was his education. His reading must have included a wide range of subjects, and the necessarily superficial character of much of it is doubtless responsible for some of his later faults. But his attentive spirit and retentive memory finally made him, on the whole, a better equipped man than the majority of his college-bred contemporaries. The father's numerous writings upon economic and political subjects must also have passed through the hands of the son, and helped to confirm the natural bent of the latter's mind. The young man acquired some familiarity with the productions of leading English economists, and regarded himself as their obedient disciple. His father's theories were antagonistic to the prevalent economic gospel, but neither paternal precept nor the political turmoil of the Nullification controversy disturbed the son's allegiance.

Mr. Elder's assertion<sup>1</sup> that prior to 1835 Henry C. Carey had made no especial study of economic science, may be supposed to mean that Carey had up to that time done no original work. That year, however, was signalized in the Carey calendar by two notable events. He retired from business with a fortune, and appeared before the reading public with an essay on the rate of wages. The impelling cause of the book was a volume of lectures, delivered by N. W. Senior in 1829-30, on *The Rate of Wages* and *The Cost of Obtaining Money*. These lectures gave Carey the text for a well-studied effort, written in his usual straightforward style, but otherwise displaying few of the familiar Carey earmarks. He agreed with the main part of Senior's propositions, and sought to expand his reasoning rather than to alter it, — to criticise details rather than principles, — except in one instance. Senior based his calculation of the cost of obtaining money upon the money price of labor in various countries, regarding that as the measure of their powers of production. Carey made the obvious comment that a careful distinction should be preserved between money wages and real wages, and he computed elaborately the variations in the latter. To Senior's fundamental doctrine of the wage-fund, Carey accorded his unqualified assent."<sup>2</sup>

There is no lack of evidence that he considered himself a member in good and regular standing of the orthodox economic church. At forty-two years of age, and in full view of the workings of the compromise tariff of 1833, he wrote :

*Laissez nous faire* is the true doctrine. . . . All the important principles of government are settled in this country, and have ceased to be matters of discussion ; and, notwithstanding the departure therefrom in the case of the tariff, it is now so fully understood that the true policy of the United States is freedom of trade and action, that there will be every day less disposition to interfere with it.<sup>3</sup>

<sup>1</sup> Wm. Elder's *Memoir of Henry C. Carey* (published by the American Iron and Steel Association, Philadelphia, 1880). See also R. E. Thompson's articles in *Stoddart's American Supplement to the Encyclopedia Britannica*.

<sup>2</sup> Carey, *The Rate of Wages*, p. 29.

<sup>3</sup> *Ibid.* p. 134.

After this, it is the more interesting to find, by a closer scrutiny, that the essay contains already the seeds of Carey's later system. While believing himself safe in the shelter of orthodoxy, he had in reality strayed far from the fold. McCulloch, Say and the economic oracles generally proclaimed that the interests of capitalist and laborer were conflicting, that high wages and high profits were incompatible. Senior had referred to this theory as one held by "dabblers in political economy." Carey fortified Senior's assertions with an attempt to demonstrate that capital increases faster than population, and that high wages are a concomitant evidence of prosperity and of the rapid augmentation of capital. Then he sang the first of his many hymns of praise to those natural laws by which a beneficent Deity secures universal harmony. He denied the truth of Ricardo's theory of rent, on the ground that the swift increase of capital must compensate the poorer soils for their natural inferiority. He treated Malthus with scant favor, arguing that food increases faster than population, and that the distress of the poor is caused by restrictions upon trade and by unequal taxation. It becomes apparent that, even in 1835, the supremacy of *laissez faire* as a principle of politics and economics was the only war-cry of the orthodox host which Carey uttered with any zeal. On this point, too, there were strong indications of heresy. The concluding chapter is the most significant of all. There, wealth is identified with happiness, and the object of political economy is defined as the promotion of the happiness of nations and the application of *national* labor, "so that the laborer can command the greatest amount of comfort with the smallest sacrifice."<sup>1</sup> Most suggestive of Carey's future career is the intensely patriotic, national feeling that pervades this first work. It is characteristic, too, of the man that he should transform a view of the subject of wages into a prospect over the whole range of economic thought. The skin may have been the skin of Say, but the voice was the voice of Carey.

Carey's maiden effort was so far satisfactory to himself that

<sup>1</sup> Cf. the statement, on p. 161, that "property is the creature of government."

felt encouraged to produce a work with the aspiring title: *The Harmony of Nature*. Let it be remembered to his honor that he recognized and confessed failure in this attempt, and refused to publish the book. Not every author, wealthy enough to gratify his ambition, would manifest equal judgment and self-control. But the fascination of his subject was powerful on him. In the language of his biographer, Mr. Elder: "He set aside the creeping, toddling effort at cobbling the received authorities," and, between 1837 and 1840, expanded his essay on the rate of wages into three volumes of *The Principles of Political Economy*. The reviewers of the day expressed their alarm at the appearance of a first volume of three hundred and forty closely printed pages, and doubted whereunto this would grow.<sup>1</sup> Some justification of their fears may be seen in the fact that Carey aimed to discern no less than thirty-seven natural laws, ruling majestically the economic world. The work is valuable chiefly as a gauge of mental evolution, but an exception may be made in favor of the second volume. That was devoted to a study of the credit system in France, Great Britain and the United States. It spoke a timely word for American banking in the hour of its distress. The country was suffering under an epidemic of financial diseases. The West was burdened with wild-cat banks and ill-regulated state-banks, and the embarrassment was destined to increase. A party of frantic statesmen, with "Old Bullion" Benton at its head, clamored for "metal money" and regarded banks as devices of the devil to aid New-Englanders. The United States Bank had been killed. A Democratic administration had declared war to the knife against the Eastern banks, largely controlled by its political opponents. The old Bank of the United States, now the United States Bank of Pennsylvania, entered to its fall, and suspended payments for the first time in 1837. Hard times had begun. No little confidence and courage were needed in order to defend in a moderate tone, as Carey did, the institution of the United States Bank and a regulated bank-note currency. At that moment, in England, a dispute concerning the true principles of banking waxed

<sup>1</sup> See the *New York Review* for July, 1838.



warm under the stimulus of general commercial distress. The party of Tooke and Mill, which supported free banking, assailed the dominant school of the currency principle, led by McCulloch and Lord Overstone. The party of the currency principle triumphed in the English Bank Restriction Act of 1844, but the progress of events has justified the advocates of free banking. With the latter company Carey identified himself, basing his plea on an excellent study of the financial crash of 1836-37 and on an investigation of the banking laws and customs of New England. The methods in vogue in Rhode Island especially won his admiration. His recommendations were: the abolition of special-charter legislation; the substitution thereof of practically free banking under the provisions of a general incorporation act; and the recognition of a limited liability of stockholders. His opinions upon the last topic secured for him the notice and regard of John Stuart Mill, an advocate of the same principle. Carey's conclusions respecting the currency were vague and defective, and seem to reveal the influence of Nicholas Biddle's undisciplined theories concerning the uses and limits of a paper circulation. Mr. Carey was still so faithful to the standards of *laissez faire* as to say: "Governments have arrogated to themselves the task of regulating the currency, and the natural effect is that nothing is less regular"; but this was his last enunciation of that creed.

During the interval that elapsed between the issue of *The Principles of Political Economy* (1838-40) and his next publication in 1845, his views concerning the beneficence of governmental interference underwent a profound modification. The seeds of heresy which we have already discovered in his earlier works, ripened rapidly, aided in their development by Mr. Carey's interpretation of the signs of his times. The wide-spread mercantile ruin of 1836-37 affected him both as a thinker and as a man of business. On both sides of the water the pillars of commerce were toppling. In New York city one hundred millions of dollars were lost in two months. Eight of the states became insolvent, wholly or in part. The national government, which had been dividing its surplus revenues among the states, now

ere Ricardo, Malthus, McCulloch and Mill blind leaders of the blind? If they were, was it out of New Jersey that a prophet should arise with the sovereign balsam for feeble eyesight?<sup>1</sup> And with one accord, they all cried the louder: "Great *laissez faire* of the Ricardians."

Mr. Carey had indeed flown in the face of Providence and the Manchester school. This economic Sanhedrin reigned supreme on both sides of the ocean. It was without a rival in the universities. A line of English statesmen, from the younger Pitt down to Sir Robert Peel, had been either publicly or in secret its votaries. Richard Cobden's clear logic and John Bright's sympathetic eloquence were combined to spread among the people the new gospel of commerce. The repeal of the corn laws, in 1846, heralded the subsequent proclamation of international freedom of trade. The Manchester school was in possession of the field and was already beginning to count its trophies. The gentle strokes made upon its armor by Dickens' cockney wit availed only to suggest what might have been done by the stinging, scathing sarcasms of a Swift. Only from one corner of the world uprose a bitter cry against the policy of prosperous England. That corner, of course, was famine-stricken Ireland. In America, at least among economists, the sway of the school of the prophets was absolute. The United States as a whole, controlled by a landed aristocracy far worse than that of England, possessed only a crude system of exchanges. The commercial life of the Atlantic seaboard drew its nourishment from London. Clay's "American system" had recoiled for the second time before the unpatriotic spirit of South Carolina. Once more the uncertain helm of our ship of state turned to follow in England's wake towards the haven of free trade. Such was the moment that Carey had chosen for the avowal of the protectionist faith that was in him.

Henceforward, for a quarter of a century, his literary activity was untiring. Books, journals, magazines, pamphlets—all were the channels of his frequent inspirations.<sup>2</sup> In 1849 he became

<sup>1</sup> Mr. Carey lived then in Burlington, N.J.

<sup>2</sup> In 1852 alone, he published eight pamphlets, aggregating nearly 200 pages.

a regular contributor to the *New York Tribune*, and Mr. Elder says that until 1857 he was virtually the economic editor of that paper. In the latter year, Mr. Greeley's opinions changed front, and he supported the new tariff act, which reduced duties still further. "He said to Mr. Carey: 'The whole world has gone over to free trade.' 'If you will wait a little,' replied Carey, 'you will see it come back to protection.'"<sup>1</sup>

Certainly the *Tribune* came back, and apparently to stay. Carey's zeal must extort admiration, even though one denies it to be of the kind according to knowledge. It is not strange that his name became a rallying cry. In Europe, Dühring and Ferrara called him "Master." Bastiat seems to have paid him the doubtful honor of plagiarizing from him. His thought was transferred into eight European languages and into one Asiatic speech. Upon the course of economic discussion and political action in the United States, Carey exercised an influence more than commensurate with either his learning or his ability. Many men since Hamilton had spun the threads for an American protective system, but Carey wove the fabric. He attempted, at least, to substitute a scientific argument for fragmentary discussions. He met the *laissez-faire* doctrinaires with a creed as sweeping, as courageous and as unyielding as their own. His work became what it has remained till to-day, the repository of testimony for the protectionist, the Bible of his faith. W. D. Kelley, Stephen Colwell, E. Peshine Smith and others formed with him what has been generally called the only American school of political economists. By these men and their successors, aided by the exigencies of doubtful partisan strife and of civil war, his doctrines were popularized and propagated. Not solely along the banks of the Delaware there may yet be found those who, with the extravagance pardonable in disciples, speak of Henry C. Carey as a great philosopher, and of his economic and social system as a crowning achievement of human wisdom.

<sup>1</sup> Prof. R. E. Thompson.

## II. *Summary of Carey's Social Philosophy.*

A review of Carey's philosophy needs not to stray outside of the three volumes of *The Principles of Social Science* which appeared in 1858-59. Here is the solid substance of his thought, condensed from the nebulous mass of lighter books, essays and newspaper polemics. Its chief constituent element is the study of the proper economic development of the citizen. The production and uses of wealth are related but subordinated topics. After Mr. Carey had deserted the guides of his youth, he ever regarded political economy as only a chapter in the volume of social science.

His starting point is the argument for the evidence of design in nature. The inherent characteristics of terrestrial existence must be happiness and peace, since an all-wise, all-merciful Power could not intend a discordant universe. The laws of nature are universal. That harmony which pulses in the ceaseless motion of the worlds must also distinguish the normal development of humanity. Man's suffering is, therefore, the result of his own wilful and criminal ignorance and deficiency. The functions of social science, and with it of political economy, are to reveal the harmonies contravened through ignorance or deficiency, and to determine the natural course of man's development. The real man must be kept in view, a being endowed with affections and intellect, not the politico-economical man, a monster, who, as Carey tersely said, "can be made to work, must be fed, and will procreate."

Social science is defined as "the science of the laws which govern man in his efforts to secure for himself the highest individuality and the greatest power of association with his fellow men." Political economy treats of the measures requisite in order to give these laws their fullest effect. Wealth is "man's power to command the always gratuitous services of nature." All values arise from labor. The distinction between value and utility is made sharply and in Carey's peculiar manner. Value is the measure of nature's power over man, and is limited by the cost of reproduction; hence value declines with t

increase of combination among men. Utility is the measure of man's power over nature, and grows with the extension of human association. Consequently there is a relative increase of utilities and decrease of values.

Mr. Carey was too tender-hearted to define capital as the reward of saving ; that last term savored of adversity. Capital is, in general, "anything that aids in production" ; it is derived from "the economy of human effort engaged in suppressing some portion of human labor and annual expense." The limits upon its accumulation are slight ; it tends, therefore, to augment faster than either food or population. Rent is the interest on capital invested in land. With values constantly decreasing, rates of interest decline steadily. The share of the capitalist and landowner, therefore, tends to dwindle in proportion although it enlarges in amount, while the portion of the laborer tends as surely to increase both relatively and absolutely. This statement Carey calls "the most beautiful of all the laws recorded in the book of science," and embellishes it with an elaborate parable of the axes. This flight of the imagination begins with the primitive stone axe, rented to the laborer for three-fourths of the product, passes on through the periods of bronze and iron, and ends with the iron and steel axe, rented to the laborer for only three-sevenths of the product. Thus the unit, labor, finally acquires a larger return than the unit, capital, and cheerful plenty smiles on every hand. In Mr. Carey's words :

However great may have been the oppression of the many at the hands of the few, all that is required for promoting and establishing equality generally is the encouragement of the power of association and the development of individuality.

This resounding conclusion opens the way to another, *viz.* :

That this law concerning the return to capital invested in axes is equally true of all other kinds of capital will be obvious to the reader upon slight reflection.

The stage is now clear for the introduction of man, and for the study of his relations to the land. Even at the outset of

his career, twenty years before, Mr. Carey had refused to admit that labor must have a smaller return as the margin of cultivation descends. His line of argument foretokens the more elaborate theory of Leroy-Beaulieu at the present day. None of our farms will sell for what they have really cost, so great has been the decline in the value of the labor necessary to make new land equally productive. Therefore rent becomes a constantly diminishing factor, and the farmer finds it continually easier to get a living. The second and, as Carey thought, the final decree of extinction against the Ricardian rent-formula was deduced from a study of the economic evolution of Crusoe the islander, the man-of-all-work for so many philosophers. Mr. Carey girdled the earth and ransacked history to show that human progress has always been from poorer to more fertile soils; that the richer lands offer a greater resistance to cultivation than half-civilized men and needy colonists can overcome. He measures Ricardo's law solely by the assumption that agriculture begins on the richer soils, saying: "The fact exists, or it does not. If it has no existence, the system falls to the ground."<sup>1</sup> The verdict of history upon this point having been recorded for Carey, it follows that the return to labor upon land is always increasing with the enlarging productivity of the soil, as well as in proportion to the power of accruing capital and to the growth of association among men. Again, as before, labor's share outstrips, by comparison, that of capital.

Mr. Carey never belabored David Ricardo without aiming to unish the Rev. Thomas Robert Malthus over Ricardo's shoulders. Malthus was Carey's dearest foe. To the American, Malthusianism was an impious philosophy which, despite the divine command to increase and multiply, interpreted growing numbers to mean growing misery; which enumerated disease and starvation among the Providentially-ordained checks upon population; which sang with a recreant poet: "Carnage is God's daughter," and declared by the tongue of Chalmers: "Were it not for such acts, the race of men would hang upon this overpeopled planet like mites upon a rotten cheese."

<sup>1</sup> Social Science, vol. 1, p. 106.

Carey breaks a vial of red-hot indignation over Malthus' head at the outset :

Professing to admire free commerce, he teaches that a monopoly of the land is in accordance with a law of nature. Admiring morality, he promotes profligacy by encouraging celibacy. If men and women will marry they may receive the reward of starvation. Desirous to uplift the people, he tells the landowner and the laborer that the loss of the one is the gain of the other. His book is the true manual of the demagogue, seeking power by means of agrarianism, war and plunder.

Was this a prophetic vision of the use that Karl Marx and the socialists would make of the doctrines of Ricardo and Malthus?

Carey's statement of his adversary's position is characteristic :

1st. The tendency to evolve exists in lower forms of matter only in a low degree, since matter takes the forms of turnips, cabbages and oysters, with only an arithmetical ratio of increase.

2nd. In the highest form of matter, the tendency to evolution exists in a high degree, for matter embodies itself in man with an increase by a geometrical ratio.<sup>1</sup>

Mr. Carey objects, first, that the given ratios of production are not only unproven but improbable. Simple organisms multiply more easily and rapidly than complex ones. Generations of ferns render possible the growth of a single oak. Secondly, Malthusianism is contrary to the goodness of God. Only a malicious being could create man without making the amplest provision for the sustenance of the creature. The earth is God's bank, and drafts upon it cannot be dishonored. Misery and vice must not be attributed to a lack of food, when they are really caused by the failure of man to exert the powers that God has given him. The third objection is one drawn from a dubious chemistry. The higher animals are herbivorous. Man is more and more dependent on the plant kingdom. Plants not only furnish food ; they play an important part in the manufacture of oxygen. Moreover, plants need carbonic acid gas and derive it from the breath of animals. But the lower animals, enemies to man or useless to him, are disappearing. Human

<sup>1</sup> *Ibid.* I, pp. 91-2.

population increases, therefore, and provides the breath of life for an increased vegetable food supply. Man, the carbon-source, and the cabbage, the oxygen producer, typify two poles of an economic order. In the equilibrium between them, "the beauty of all natural arrangements does admirably exhibit itself."<sup>1</sup> Thus Malthus is pulled down with one hand, and Dr. Graham and the vegetarians are bolstered up with the other.

Herbert Spencer's article in *The Westminster Review* for April, 1852, provided the fourth objection. Man's cerebral and productive functions are antagonistic in development; as Carey phrases it: "The degree of fertility varies inversely as the nervous system." Consequently the pressure of population upon the means of subsistence is greater in earlier than in later stages of society. Proofs and illustrations are discovered in craniology and biology; in the assertion that famous men of high brain-power have had few children or none at all; in the fact that the codfish produces a million eggs at once, while the sagacious hawk is comparatively sterile; and, lastly, in the proverbial fertility of people like the Irish, who are mere drudges in condition, devoid of the advantages of association in labor, and strangers to mental discipline. Population is, therefore, normally self-regulative.

The undersong which runs through all of Carey's harmonies is the power of association. Association signifies an alliance of diverse industries, adapted to promote universal national productivity and to achieve economic independence. Of two tendencies visible in society, one is leading towards centralization, the other towards decentralization. Centralization, in the field of economics, implies that international division of labor which must attend freedom of trade and by which each nation develops only the superior natural resources peculiar to itself. Despotic power then lies in the hands of the middlemen who control the world's exchanges. The place where these traders congregate becomes the world's mart. There alone raw produce can be advantageously exchanged and transformed into finished products, which are sold to the distant producer at a double

<sup>1</sup> *Ibid.* III, p. 319.



profit to the middleman. Such is the vaunted English free-trade policy, which hopes to obtain a monopoly of manufactures and of the world's carrying trade. Other nations must betake themselves to agriculture. Their artisan industries will be crushed by the force of adverse capital. Their competition to sell raw produce to the English manufacturer will enthrone him as the autocrat of the business world, to which London will be what Rome was to the republic. England has done much to annihilate the mechanical industries of Ireland and of India. The United States, though emancipated politically from England, can still be kept industrially subordinate. Men scattered upon farms lose their capacity for combined effort, and, in the absence of an artisan class, slave labor with its concomitant degradation will be ineradicable.

To this picture of international comity, Carey contrasts the effects of decentralization. The revolution of the commercial world around London must be checked or modified. Local and national centres of attraction must be created. The mighty centripetal force of British commercial supremacy must be counteracted by governmental action, and protective tariffs must be interposed between the nations and the baleful rays from London 'Change. Then Adam Smith's advice to export finished articles rather than raw materials can be obeyed. The monopoly of the English manufacturers will cease. The ruinous transportation tax will partially disappear; for numerous and active domestic markets will be within reach. Raw materials, including labor, will command a relatively high price, to which the value of manufactured articles will gradually approximate. Earth products will be consumed near the place of origin, whereby the annual drain upon mother earth will be substantially repaid. In the young communities, farming will no longer be the only lucrative occupation. A middle class of working men and women will arise, slave labor will be swept away, patriotic national feeling will be developed, and the wilderness will blossom as the rose.

One of Mr. Carey's quaintest methods of illustration was the use of deftly-fashioned word-chains, which he hung like fringes

re and there upon the tissue of his argument. It seems as if the steady flow of the text grew irksome to the vivacious writer, and caused him to plunge into cascades like this :

Matter, force, motion, men, association, complexity of interests, centralization, harmonious increase of power.

the reverse, the links of the chain become :

Matter, force, motion, man, separation of the units, centralization of mass, subjection of the many to the powerful few, slavery, stagnation, decrease of real civilization.

These comprehensive speculations concerning association and centralization Mr. Carey repeats, as Roscher says, "with wearying wearisomeness." Dissertations upon population, capital, rent or wages were all avenues to the same goal — the national need of a protective tariff. Was there an agitation for an international copyright law? Carey's nimble pen hastened to pronounce the obliteration of national barriers and the formation of publishers' monopolies. He urged also that the best thinkers would derive no benefit from the proposed law, for their books are usually unsaleable. Again, did the periodic recurrence of business depressions dishearten some? Carey could demonstrate that centralizing free trade was the cause and centralizing protection the remedy. Referring to the crash of 1857, William Cullen Bryant remarked in the *Evening Post* that crises are epidemics against which human prudence can no more provide than it can against scarlet fever or cholera. Such sentiment was to Carey as a bugle blast to a charger. He addressed to Mr. Bryant a long series of letters, opening with the familiar text : "Can it be that a beneficent Providence has so adjusted the laws under which we live that laborers *must* be at the mercy of those who hoard food and clothing with which they purchase labor?" Then follow the usual arguments and admonitions : "Bring the consumer to the producer, the loom and spindle to the plough and harrow, the societary movement will become more regular," *etc.* Bryant took no more formal notice of these letters than to say, editorially, that the tariff

question was not the topic of the time, and that, if Mr. Carey wanted an antagonist, Mr. Bryant would refer him to one Henry C. Carey, of Philadelphia, who, about twenty years before, had demonstrated in three volumes of *Political Economy* that the happiness and wealth of a people resulted from its freedom of trade. The struggle, Mr. Bryant thought, would last three or four years, for the contestants were both voluminous writers; but Mr. Carey would have the advantage of already knowing thoroughly his opponent's positions. When Mr. Carey had won the victory, his associates in the Pennsylvania iron mills would probably erect a cast-iron statue to the conqueror.

The supercilious tone of this unhandsome response illustrates very well the contempt felt for the persistent heresies of the outcast from the synagogue. The date of this passage at arms was January 14, 1860. In view of the tremendous issues that were then shaping themselves, Carey's answer, a week later, seems somewhat plaintive: "In this state and Jersey, the tariff is the one and almost the only question." But suffice it to remember that, to Carey's mind, slavery and protection were related as bane and antidote. He was by no means ignorant of the "irrepressible conflict," nor had he been loath to enter it. He thought of slavery as an economic evil, to be suppressed by economic means. In book and pamphlet he had attacked the Southern system of degraded labor, and argued that free labor would conduce to greater wealth. "Slavery," he pleaded, "must stand or fall with free trade." In describing the effect upon the South of the development of factories and of an artisan class, he quoted approvingly from the newspaper literature of the day a description of the transformation wrought upon a Southern "cracker" neighborhood by the establishment of a manufactory.

They come barefooted, dirty, and in rags; they are scoured, put into shoes and stockings, set at work, and sent regularly to Sunday School. . . . Some of the girls, now well dressed and even pretty and intelligent, were a year ago at work in the fields plowing with a horse, or hoeing corn. Since Christmas, over forty marriages between male and female operatives have taken place.

The system of slave labor could not ultimately compete with such manifestations of the power of association and decentralization.

It should not be forgotten, especially by Mr. Carey's modern followers, that he believed himself to be the consistent champion of the principles underlying a wise and healthy freedom of trade. He denied that England's system was true free trade. "Free trade, as ultimated in England," he wrote to Henry Wilson, "is the most debased ignorance, the most abhorrent cruelty, the most disgusting vice and the most heart breaking misery that can be seen in any country calling itself civilized and Christian." Carey depicted the final international free trade as an exchange of surplus products between industrially-developed nations, whose range of production should be limited only by absolute natural barriers. With this conception in his mind, he wrote :

Of the advantage of perfect free trade there can be no doubt. What is good between the states ought to be good the world over. But free trade can be successfully administered only after an apprenticeship of protection. Strictly speaking, taxation should all be direct. Tariff for revenue should not exist. Interference with trade is excusable only on ground of self-protection. A disturbing force of prodigious power prevents the loom and spindle from taking and keeping their proper places by the plow and harrow. When the protective régime has counteracted the elements of foreign opposition, obstacles to free trade will disappear and the tariff will pass out of existence. Wars will cease ; for no chief magistrate will dare to recommend an increase of direct taxation.

This millennial vision, however, was never seen, excepting in the remote distance. The tariff, which was to be the road to Paradise, never appeared to be too strait and narrow, and proposals to soften its asperities always elicited remonstrances from Henry C. Carey.

Carey's protectionist hobby carried upon its back a theory of money. Hume, Smith and Mill were derided for their doctrine that money serves only as a symbol, and is the most unprofitable part of a nation's capital. Carey advised nations as well as men to put money in their purses. Money tends always to flow

towards places where increased association has made business brisk and circulation rapid. These are the homes of stable prices and growing credit. Here alone credit-money is useful and necessary. National independence will be best subserved by a domestic non-exportable currency, while the gold dollar should be a unit of international currency. The domestic exchanges will then be less liable to disturbance from the fluctuations of the value of the precious metals. The Morrill Tariff of 1862, and the National Banking Act of 1863, with the concurrent and resultant issues of greenbacks and well-secured bank bills, fairly realized Carey's ideal. Professor Thompson, indeed, is authority for the statement that

Carey was the trusted adviser of both Lincoln and Chase, and the latter submitted to Carey the plan for a national banking system — only to find Carey's predictions about the weak points of the first draft fully confirmed by experience.

In Carey's estimate of the value and efficiency of a national banking system and of a national bank-note currency, there was no shadow of variation. From the liberal banking theory which he had advocated at the beginning of his career he never swerved. Although his name was popularly, and justly, identified with the Greenback party of later times, he never joined or encouraged the attack of the multitude upon banking institutions and bank-money. Banks of issue, he argued, are essential as springs of local business life. Mr. Carey incurred greater odium by his opposition to contraction of the paper currency after the war, than by his advocacy of a protective tariff before the war. Perhaps it is, even yet, too early to say what the final judgment upon that financial policy will be. Carey believed that it inflicted needless suffering upon debtors. His thesis was that an increasing business demands an increasing currency. In a series of letters to Secretary McCulloch (1866), Mr. Carey ridiculed the idea that, while population had increased by one-third and production had trebled since 1860, the secretary should propose to reduce the amount of greenbacks by one-half in five years and to decrease the bank circulation to the figures of 1860.

the discredit of the existing currency would paralyze the industries of the country. Wall Street had become, like London, a universal and ungenerous creditor, finding a profit in keeping up the rate of interest. Carey predicted that swift contraction would sow a crop of wild monetary plans, especially among the holders of mortgaged Western farms, — a prediction fully verified during the harvest of greenbackism.

He censured also the sale of United States bonds in foreign markets, asserting that specie payments could not be safely resumed until the national debt was held at home. Sherman's project of resumption, Carey opposed, fearing that the supply of gold was too small and uncertain. It is strange that Carey's optimistic faith in the country's prosperity did not render him sanguine in this instance, at least, as the Ohio statesman. His support of bi-metallism and of the remonetization of silver is the best security for a stable national currency in the United States, would not now invite ridicule as it seemed to do fifteen years ago. To-day's heresies are ever likely to become to-morrow's dogmas.

### III. *Carey's Work and Character.*

To many, a criticism of Carey's thought would seem futile, because the mere statement of the system must carry with it an ample refutation and condemnation. Contemporary orthodox economists greeted Carey's effusions with contempt, and professors of political economy held him up to their classes as a dreadful example of the "infelicities of half-knowledge." Others intimated, as Mr. Bryant did, that Carey's desertion from the orthodox host was due to selfish or mercenary motives. Mr. Carey may have mistaken economic rhetoric for economic laws, but he was not venal. Neither the man nor his work deserves to be dismissed with a sneer. Measured by results, the Carey school, and not its opponent, has achieved success in the United States. For thirty years, the stone which the builders rejected has been the head of the corner. Carey and his friends never captured our colleges; but, for a generation, they have dominated

five-sevenths of the newspaper offices, a pulpit far more influential than the professorial chair. The arguments to which Carey gave form and eloquence are in the mouths of more than half the business men and farmers of our country; and, in the last Presidential campaign, the Republican party re-affirmed the extremest principles of the Carey school, including even the rancor towards England, with a violence and absoluteness that would probably have surprised Carey himself.

That Mr. Carey was not a philosophical system-maker, is as sure as that he aspired to be one. From manhood to old age he dreamed in his sanguine way of correlating the universe; and his last pretentious utterance, *The Unity of Law* (1872), was an endeavor to depict that complete world-order which he imagined. As in his younger days, he was conscious of failure; yet he was content to be judged by his ideal, however unrealized. Mr. Carey avowedly sacrificed the political economist to the social scientist. Not wealth but man, was the burden of his thought. Yet to call him a social scientist seems too generous; for he passed by the political, religious and intellectual development of the human race with scant notice. An argument against England's commercial system, a philippic against Malthus and a summer's harvest of aphorisms and definitions could scarcely constitute a complete philosophy of anything.

Mr. Carey had neither the education nor the natural ability which might have enabled him to plod. The wings of his fancy were perpetually lifting him from the ground of sober reasoning and wafting him away on the aërial currents of decentralization, association, and other polysyllabic elements. But these bird's-eye views brought their compensations. Accuracy was lost, but breadth was gained. He saw no one thing closely, but he saw more things. The human interest, which must be the only large and inclusive one, stretched from rim to rim of his vision. When Professor Sumner says that, if he were to live his life over again, he would devote himself to social science rather than to political economy, he partially justifies the attitude of a man who was, in most respects, his antipode. Mr. Carey refused to consider political economy, social science or any other

single branch of knowledge as an unrelated subject. It was just this interest in the relations of things — this wide view — that his exact critics often lacked. Francis Lieber, in his superficial pamphlet on *The Fallacies of Protection*, in reply to Carey, said: "There are no miles in political economy." Carey was in accord with the best modern thought, in the reply that miles are of more practical importance to the economist than abstract statements of laws, and that a political economy with the "miles" taken out of it is valueless.

Between Carey and his orthodox foes there was little common ground. Carey's bases were the harmony of all interests and the need of a national development. The opposite party built upon *laissez faire*, unrestricted competition and the economic needs of a world community. Even admitting the principle of Carey's fierce optimism, there is no difficulty in disputing his applications of it. Using his own favorite method of illustration, one may observe that discordant notes are often contributory to the grandest harmonies. The germ of weakness in Carey's version of the universal harmony was his agreement with Rousseau in the goodness of the natural man and of the natural impulses. In this respect, he embodied the faith of the Jeffersonian democracy amidst which he was reared. An infusion of dour New England Calvinism would have gone far to redeem the man; but then there would have been no Carey.

He overlooked the probability that hatred, self-interest andavarice will exert the power of association as freely as the benevolent qualities can, and that the might of swiftly growing capital will surely be swayed by selfishness. After all, the assertions that labor profits by the accumulations of the past, and that values tend to decline, only remotely suggest a millennium. That "beautiful law of nature," according to which labor will finally become richer than capital, carries little comfort to a generation that is compelled to resort to socialistic measures or repressing the rapacity of corporations and of individual monopolists. Even Carey had his warning, and responded to it manfully. Soon after his removal to Burlington, N. J., in 1833, circumstances called to his notice the despotic assump-



tions of the Camden and Amboy Railway Company, its flagrant disregard of popular welfare, its partialities and arbitrary exactions. To know was to act. He opened and led an aggressive campaign of public letters and pamphlets against the abuse of corporate powers. After a protracted struggle, the seat of war was transferred to legislative halls, where the corporation was finally defeated and restrained by suitable enactments. So the champion of protection, which, as a huge example of governmental interference, is but an introductory stage to governmental ownership, was naturally prominent in the initial agitation in this country for governmental regulation of railway monopolies. The possibility that manufacturing monopolies might threaten the national well-being probably never occurred to him.

Contrast still further a few of the principal positions of the opposing camps.<sup>1</sup> Where Mr. Carey called labor the source of value without exception, the classical school affirmed labor to be the source of value in products, with some exceptions, but not in land, which has natural value. The former definition, however incomplete, is the popular one and receives the socialist allegiance. Again, Carey explained rent as the interest on the capital which makes land productive. The classical school declared that rent is distinct from interest on capital, and that it is paid for the use of inherent powers of the soil. Modern economists recognize both these elements as "fictitious rent" and "rent proper" respectively, applying the Ricardian formula to the latter only.

To criticize Carey's exposition of rent would be to commit the folly of thrice slaying the slain. Gen. Francis A. Walker's essay upon *Land and its Rent*<sup>2</sup> has spoken the last necessary word in demonstrating that Carey's attack could not even graze the Ricardian formula. Quite as unfortunate was Carey's argument that, since more labor has been applied to the soil than the land is now worth, land must owe all its value to that labor. This *non-sequitur* recalls the ancient remark of the flies upon the

<sup>1</sup> See the *New York Review*, July, 1838.

<sup>2</sup> Walker, *Land and its Rent*, p. 35.

men: "See what a dust we raise." Once more, Carey would say that, with the progress of society, the profits of labor and of investment increase, but the share of the landholder disappears, while population tends to press more lightly on the means of living. His antagonists averred that, with the progress of society, the profits of labor and of investment decrease, but the share of the landholder grows, while population tends to press more closely upon the means of living. The first two statements on either side are not so irreconcilable as they appear. Ricardo speaks absolutely and of a limited period of time. Carey speaks relatively and of an indefinite period of time. Ricardo estimated conditions as fixed quantities, and proceeded upon an implied assumption that all men of whatsoever nationality would act alike under similar influences at a given time. Carey grasped firmly the notion of different phases of evolution, and his constant use of history afforded him a fertile background of allusion, and perhaps of illusion, of which the mere simplicity of the classical school was quite guiltless.

Of Malthus's speculations, Carey was simply unable to appreciate the real intent and scope. Realizing, however, that they struck at some of the roots of his cheerful optimism, he collected all the counter-arguments that the wit of others had suggested or his own imagination had devised. The doubtful objections of Malthus and others, drawn from chemistry, biology and craniology, he accepted with enthusiastic satisfaction; while his own comparison of the earth to a bank, of which the Almighty is the cashier, was rather poetical than scientific or relevant.

Of Adam Smith, or rather, of Adam Smith in his lucid intervals, Carey professed himself a disciple. Although he expressed attachment to the master, he was compelled to make periodical appeals from Philip drunk to Philip sober. Oft-repeated quotations from *The Wealth of Nations*, indicating the great free trader's desire to nourish domestic markets and manufactures and to reduce costs of transportation, were rolled as sweet morsels under Carey's tongue.

With the mercantilists of the seventeenth and eighteenth centuries, Carey had much affinity. He represents the transi-

tion of mercantilism into the national economy of the modern time. Professor Adolf Held, indeed, maintains that mercantilism is the kernel of Carey's system;<sup>1</sup> but if so, the kernel has undergone great transformation. For the mercantilist maxim that the economic well-being of a state is proportional to the quantity of money circulating in it, Carey would have substituted "proportional to the rapidity of the monetary circulation." He welcomed the increase of the instrument of exchange as a proof of the growth of association, and as a cause of approximation between the prices of raw and of finished products. Not until the dotage of his Greenback days did he apparently harbor the thought of distributing money from government vans in the mortgaged West, like food from soup-kitchens for the poor. Mr. Carey, moreover, was not friendly to treaties of reciprocity. He demanded full freedom for credit-money. With the methods by which the mercantilists hoped to swell the home supply of metal money, Carey's scheme for a national currency could have but little sympathy. A colonial system, which was a favorite adjunct to the mercantilist theory, was the object of Carey's fiercest denunciation. Colonies imply dependence, and the chief dogma of Carey's gospel was the necessity of local independence. He even deplored the rapid settlement of the western and the southwestern portions of this country, attributing the westward rush to the colonial position of the United States with reference to England and London. He contended that the people, increasing compactly along the Atlantic sea-board, should have extended westward only as the gradual development of population and of civilization compelled and warranted such an expansion. The closest bond between Carey and the mercantilists was their common advocacy of protective duties. Yet there is still an obvious difference. Carey preached protection, not that money might flow in to pay for an excess of exports, but in order, as he supposed, to develop the whole producing power of a nation. National completeness was his touchstone. A favorable balance of trade was the test of the mercantilists. The efforts of the lat-

<sup>1</sup> Adolf Held, *Carey's Socialwissenschaft und das Merkantilssystem* (Würzburg 1866).

r to cheapen raw materials, including labor, seemed to Carey destructive of social welfare. "What," he exclaimed, "must have been the condition of the English laborer when the German could boast, as he did one hundred and fifty years ago, that he bought of the Englishmen the skin of a fox for a groat, and sold them the tail for a shilling!"

The greatest of mercantilists, Colbert, was, however, Carey's real statesman. Ever and anon, he turned aside from the highway of his thought to erect little temples to Decentralization, wherein he invited the reader to worship at the shrine of Colbert and to swear upon the altar eternal hate to England's commercial creed. In the protective measures by which the genius of Colbert transformed the face of France, the theories of Carey and of Friedrich List alike found a source and, to some extent, a commentary.

Carey played much the same part in the United States that List, to whom he was without doubt profoundly indebted, played in Germany. A spirit of national unity and national industrial freedom were the objects of each. Each received prompt professional condemnation and final popular approval. But the "national" doctrine achieved recognition among German economists, when it was scorned and spurned by the Manchester school in England and the United States. The so-called "historical school" was partly an outgrowth or expansion of the "national" idea, and Roscher and Carey met in the former's axiom that man is both subject and object of economic science. Chiefly from the loins of the historical school sprang the various groups of *catheder-socialisten*, who dominate to-day the world of German economics. They are the great-grandchildren of mercantilism, and members of the household of Carey and List. From them the contagion of the family has returned to the shores of the United States. It has permeated economic circles with the spirit of revolt until the old sanctuary has become almost deserted.

In the field of politics, German and American national economists fought out similar battles to similar conclusions. National consolidation was their aim, and in both countries they were

among the foremost partisans of a closer union. List urged that an economic union of the German people would break down the props of particularism in the petty territorial divisions and facilitate a political union ; and so it was. In the United States, Carey and the party to which he belonged, struggling for national solidarity, were confronted by a separatist caste, whose pet institution, slavery, could be maintained only by banishing mechanical industries and by dividing and diminishing national powers. Mr. Carey was actively patriotic at a time when patriotism, to the majority of citizens in the North at least, meant folding the hands and shutting the eyes. His cry of "Factories for the South" may have implied an underestimation of slavery as a political factor. It is easy to laugh at those poor white girls who were scourged, sent to Sunday-school and married at the rate of ten per month, but it is nevertheless true that factories and slavery were deadly enemies. Carey's words in 1854 are worth heeding thirty-six years later. To-day, the growth of an artisan and mechanic class in the South may be most potent in eradicating the remaining evils of a feudal civilization. It is not from perversity that Germany and the United States have both donned protectionist armor, either during, or soon after, a successful war for national unity. The fact is but a witness to the strength and scope of the national idea. The philosophic conceptions of the nation and the state which underlie the national economic theory and which lend to the protectionist belief whatever real justification it may have, are now evolving, upon a scale as yet unmeasured, the forces of socialism. Is it not significant, that Germany and the United States are the two great countries in which the divers gospels of socialism do most prevail and have the largest number of intelligent apostles? If protection reaches its logical outcome, if the horn of nationalism is exalted with honor and the socialistic organization of the state arrives with the twentieth century, Carey and his associates will be canonized as forerunners and prophets of the new dispensation.

One undeniable service Carey and other opponents of the classical school have rendered to their science in their own

and generation. They helped to destroy the politico-economic manikin which used to be the dummy of the doctrines. Modern economists have learned to see the human blood in human veins. They are quick to recognize the powerful intervention of moral forces in economic evolution. They no longer shut their eyes to the freedom of the will and the strength of the affections. So far the same mind is in them as it was in Carey.

Mr. Carey's intellectual life unfolded in a day of experiments: experiments in business with railways, banks, and steamboats; experiments in religion and society with phalansteries and communes; and experiments in politics amid the dissolution of parties. Into this crude chaos of American life, Henry C. Carey brought a sensitive, sympathetic temperament and an impressionable mind. He inherited with his Hibernian blood a disposition prone to the contradiction of asserted claims, to persistent obstinacy, to ardent and implicit confidence in whatever he had once accepted. The nemesis of ancestry haunts the existence of every man, and the career of Carey is the magnified reflection of his father's life. Both men obtained an education in a printing office. In 1810, the father advocated the renewal of the charter of the United States Bank. The son was a life-long champion of a national banking-system. The father, ten years later, published a book which tried to demonstrate the harmony of the real interests of the various sections of society. That principle was the son's shibboleth. Father and son entered the lists against Malthus, the elder Carey's publication bearing the date, 1828.<sup>1</sup> In 1820, the father was instrumental in forming the Philadelphia Society for the Promotion of National Industry, and the honorable John Sergeant said that Pennsylvania owed more to Mathew Carey than to any other man for the creation of a public spirit in the support of domestic interests.<sup>2</sup> From 1822 onward, Mathew Carey vouchsafed to the world more than two thousand pages

Essays on the Public Charities of Philadelphia (1828).

See Account of the Dinner given to Professor List, in Philadelphia, Nov. 3, 1877 (pamphlet, in the *Boston Athenæum*).

of violent protectionist polemics. A large portion of Henry Carey's thirteen octavo volumes, three thousand unbound pages and manifold newspaper contributions had the same end in view. Mathew Carey was a frequent visitor to Donnybrook Fair, quarrelling and sympathizing with equal readiness and zeal. The son's warfare was more purely literary, but the fervent Celtic character shines out in his hot denunciations of Malthus and of England's policy of trade. He was a dangerous enemy and difficult to deal with; for he never knew when he was beaten, and never contemplated the possibility of ultimate defeat.

The ablest logician may use faulty syllogisms when he has predetermined his conclusions. The most sensible historian becomes fanatical sometimes, when his facts concern his personal enthusiasms. Mr. Carey was neither a logician nor a historian. He knew neither the careful training of the one nor the cultured impartiality of the other. Like other men of his warm-hearted race, he was apt to mistake striking analogies for flawless logic, and a quick appreciation for a discriminating spirit. He was incapable of that slow and patient analysis which is the mark of a scientific spirit in investigation. His mode of judgment was too emotional and intuitive. He appeared to employ inductive methods, but his induction was only the handmaid to a deductive system. He scanned the page of history that he might confirm opinions rather than that he might form them.

It is remarkable that the blood which flowed in his veins conveyed so little of the gift of humor. If his sense of the ludicrous had been stronger, he would have wasted fewer blows on thin air, and would have been more conscious of his own limitations. He was always seeing men as trees walking. He confounded Malthus with misery and Ricardo with extortionate rents. A fundamental defect of his mind was this rudimentary sense of mental perspective. He was ever busy with the relations of things; but abstractions must become tangible, if possible personal, in order to be fully intelligible to him. Starting with a denial of the utility or truth of the



abstract economic science taught by the Manchester school, he speedily hit upon a concrete embodiment of that science in the ubiquitous English trader. His dispassionate negation of the sovereignty of selfishness rose to a shriek of indignation against individuals. Calm, direct consideration was supplanted by a vigorous iteration that would have been tedious, if his fiction had been less copious and his style less clear.

His mind was eager to assimilate and abnormally synthetic. His *Social Science* narrowly escaped including a handbook of universal history and of the natural sciences. Facts, figures and theories were educes from the four quarters of heaven, and, in the luminous atmosphere of Carey's phrase, seemed to fit together as perfectly as the old Greek mason-work. The whole structure was illuminated and rendered attractive by an all-pervading enthusiasm, an attribute too generally lacking in the works of his orthodox contemporaries. The glow of Carey's sympathetic optimism might often suffice to excite unfounded anticipations in the too-generous reader, and to beguile him, as it apparently beguiled the author, into the logical pitfalls of the false cause.

Penetrating through those enveloping qualities of Carey's life, which neutralized so much of his possible usefulness and which have led so many half-cultured minds astray, — his defective education, his untrained, emotional temperament, his arbitrary zeal, his over-confidence, — the critical student in the future may still discern this wholesome core: an honest man in earnest, who had the strength to hope for the future of laborers and of all mankind, who had the grace to prefer the growth of a national spirit to the immediate increase of a national income, and who possessed the grace and strength combined to give the lie to that golden rule of the gospel of dollars: "It is the chief end of a state's economy to buy in the cheapest market and to sell in the dearest."

CHARLES H. LEVERMORE.



## THE EVOLUTION OF COPYRIGHT.

“THE only thing that divides us on the question of copyright seems to be a question as to how much property there is in books,” said James Russell Lowell two or three years ago ; and he continued,

but that is a question we may be well content to waive till we have decided that there is any property at all in them. I think that, in order that the two sides should come together, nothing more is necessary than that both should understand clearly that property, whether in books, or in land, or in anything else, is artificial ; that it is purely a creature of law ; and, more than that, of local and municipal law. When we have come to an agreement of this sort, I think we will not find it difficult to come to an agreement that it will be best for us to get whatever acknowledgment of property we can, in books, to start with.

“An author has no natural right to a property in his production,” said the late Matthew Arnold, in his acute and suggestive essay on copyright,

but then neither has he a natural right to anything whatever which he may produce or acquire. What is true is that a man has a strong instinct making him seek to possess what he has produced or acquired, to have it at his own disposal ; that he finds pleasure in so having it, and finds profit. The instinct is natural and salutary, although it may be over-stimulated and indulged to excess. One of the first objects of men, in combining themselves in society, has been to afford to the individual, in his pursuit of this instinct, the sanction and assistance of the laws, so far as may be consistent with the general advantage of the community. The author, like other people, seeks the pleasure and the profit of having at his own disposal what he produces. Literary production, wherever it is sound, is its own exceeding great reward ; but that does not destroy or diminish the author's desire and claim to be allowed to have at his disposal, like other people, that which he produces, and to be free to turn it to account. It happens that the thing which he produces is a thing hard for him to keep at his own disposal, easy for other people to appropriate ; but then, on the other hand, he is

interesting producer, giving often a great deal of pleasure by what he produces, and not provoking nemesis by any huge and immoderate profits on his production, even when it is suffered to be at his own disposal. So society has taken him under its protection, and has sanctioned his property in his work, and enabled him to have it at his own disposal.

Perhaps a consideration of the evolution of copyright in the past will conduce to a closer understanding of its condition at present, and to a clearer appreciation of its probable development in the future. It is instructive as well as entertaining to trace the steps by which men, combining themselves in society, as Arnold's phrase, have afforded to the individual author the sanction of the law in possessing what he has produced; and it is no less instructive to note the successive enlargements of jurisprudence by which property in books—which is, as Powell says, the creature of local municipal law—has slowly developed until it demands and receives international recognition.

### I.

The maxim that "there is no right without a remedy," indicates the line of legal development. The instinct of possession is strong; and in the early communities, when most things were common, it tended more and more to assert itself. When anything which a man claimed as his own was taken from him, he had a sense of wrong, and his first movement was to seek vengeance—much as a dog defends his bone, growling when it is taken from him, or even biting. If public opinion supported the claim of possession, the claimant would be sustained in his effort to get revenge. So, from the admission of a wrong, would grow up the recognition of a right. The moral right became a legal right as soon as it received the sanction of the state. The state first commuted the right of vengeance, and awarded damages, and the action of tort was born. For a long period property was protected only by the action for damages in disseisin; but this action steadily widened in scope until it became an action for recovery; and the idea of possession or right broadened into the idea of ownership. This development

went on slowly; bit by bit and day by day, under the influence of individual self-assertion and the resulting pressure of public opinion, — which, as Lowell once tersely put it, is like that of the atmosphere: “You can’t see it, but it is fifteen pounds to the square inch all the same.”

The individual sense of wrong stimulates the moral growth of society at large; and in due course of time, after a strenuous struggle with those who profit by the denial of justice, there comes a calm at last and ethics crystallize into law. In more modern periods of development, the recognition of new forms of property generally passes through three stages. First, there is a mere moral right, asserted by the individual and admitted by most other individuals, but not acknowledged by society as a whole. Second, there is a desire on the part of those in authority to find some means of protection for this admitted moral right, and the action in equity is allowed — this being an effort to command the conscience of those whom the ordinary policeman is incompetent to deal with. And thirdly, in the fullness of time, there is declared a law setting forth clearly the privileges of the producer and the means whereby he can defend his property and recover damages for an attack on it. This process of legislative declaration of rights is still going on all about us and in all departments of law, as modern life develops and spreads out and becomes more and more complex; and we have come to a point where we can accept Ihering’s definition of a legal right as “a legally protected interest.”

As it happens, this growth of a self-asserted claim into a legally protected interest can be traced with unusual ease in the evolution of copyright, because copyright itself is comparatively a new thing. The idea of property was probably first recognized in the tools which early man made for himself; and in the animals or men whom he subdued; later, in the soil which he cultivated. In the beginning the idea attached only to tangible things — to actual physical possession — to that which a man might pass from hand to hand. Now in the dawn of history nothing was less a physical possession than literature; it was not only intangible, it was invisible even. There

as literature before there was any writing, before an author could set down his lines in black and white. Homer and the rhapsodists published their poems by word of mouth. *Littera ripta manet*; but the spoken poem flew away with the voice of the speaker and lingered only in the memory. Even after writing was invented, and after parchment and papyrus made it possible to preserve the labors of the poet and the historian, these authors had not, for many a century yet, any thought of making money by multiplying copies of their works.

The Greek dramatists, like the dramatists of to-day, relied for their pecuniary reward on the public performance of their plays. There is a tradition that Herodotus, when an old man, read his *History* to an Athenian audience at the Panathenaic festival, and so delighted them that they gave him as a recompense ten talents—more than twelve thousand dollars of our money. In Rome, where there were booksellers having scores of trained slaves to transcribe manuscripts for sale, perhaps the successful author was paid for a poem, but we find no trace of copyright or of anything like it. Horace (*Ars Poetica*, 345) speaks of a certain book as likely to make money for a certain firm of booksellers. In the other Latin poets, and even in the prose writers of Rome, we read more than one cry of suffering over the blunders of the copyists, and more than one protest in anger against the mangled manuscripts of the hurried servile transcribers. But nowhere do we find any complaint that the author's rights have been infringed; and this, no doubt, was because the author did not yet know that he had any wrongs. Indeed, it was only after the invention of printing that an author had an awakened sense of the injury done him in depriving him of the profit of sending his own writings; because it was only after Gutenberg had set up as a printer, that the possibility of definite profit from the sale of his works became visible to the author. Before then he had felt no sense of wrong; he had thought mainly of the honor of a wide circulation of his writings; and he had been solicitous chiefly about the exactness of the copies. With the invention of printing there was a chance of profit; and as soon as the author saw this profit diminished by an unauthoriz-

reprint, he was conscious of injury, and he protested with all the strength that in him lay. He has continued to protest from that day to this ; and public opinion has been aroused until by slow steps the author is gaining the protection he claims.

It is after the invention of printing that we must seek the origin of copyright. Mr. De Vinne shows that Gutenberg printed a book with movable types, at Mentz, in 1451. Fourteen years later, in 1465, two Germans began to print in a monastery near Rome, and removed to Rome itself in 1467 ; and in 1469 John of Spira began printing in Venice. Louis XI sent to Mentz Nicholas Jenson, who introduced the art into France in 1469. Caxton set up the first press in England in 1474.

In the beginning these printers were publishers also ; most of their first books were Bibles, prayer-books, and the like ; but in 1465, probably not more than fifteen years after the first use of movable types, Fust and Schoeffer put forth an edition of Cicero's *Offices*, — "the first tribute of the new art to polite literature," Hallam calls it. The original editing of the works of a classic author, the comparison of manuscripts, the supplying of *lacunæ*, the revision of the text, called for scholarship of a high order ; this scholarship was sometimes possessed by the printer-publisher himself ; but more often than not he engaged learned men to prepare the work for him and to see it through the press. This first edition was a true pioneer's task, it was a blazing of the path and a clearing of the field. Once done, the labor of printing again that author's writings in a condition acceptable to students would be easy. Therefore the printer-publisher who had given time and money and hard work to the proper presentation of a Greek or Latin book, was outraged when a rival press sent forth a copy of his edition and sold the volume, at a lower price possibly, because there had been no need to pay for the scholarship which the first edition had demanded. That the earliest person to feel the need of copyright production should have been a printer-publisher, is worthy of remark ; obviously in this case the printer-publisher stood for the author and was exactly in his position. He was prompt

to protest against this disseisin<sup>1</sup> of the fruit of his labors; and the earliest legal recognition of his rights was granted less than a score of years after the invention of printing had made the injury possible. It is pleasant for us Americans to know that this first feeble acknowledgment of copyright was made by a republic. The Senate of Venice issued an order, in 1469, that John of Spira should have the exclusive right for five years to print the epistles of Cicero and of Pliny.<sup>2</sup>

This privilege was plainly an exceptional exercise of the power of the sovereign state to protect the exceptional merit of a worthy citizen; it gave but a limited protection; it guarded but two books, for a brief period only, and only within the narrow limits of one commonwealth. But, at least, it established a precedent—a precedent which has broadened down the centuries until now, four hundred years later, any book published in Venice is, by international conventions, protected from pillage for a period of at least fifty years, through a territory which includes almost every important country of continental Europe. If John of Spira were to issue to-day his edition of Tully's *Letters*, he need not fear an unauthorized reprint anywhere in the kingdom of which Venice now forms a part, or in his native land Germany, or in France, Belgium or Spain, or even in Tunis, Liberia or Hayti.

The habit of asking for a special privilege from the authorities of the state wherein the book was printed spread rapidly. In 1491 Venice gave the publicist Peter of Ravenna, and the publisher of his choice, the exclusive right to print and sell his *Pharnix*,<sup>3</sup>—the first recorded instance of a copyright awarded directly to an author. Other Italian states “encouraged printing by granting to different printers exclusive rights for fourteen years, more or less, of printing specified classics,”—and thus the time of the protection accorded to John of Spira was

<sup>1</sup> If any lawyer objects to the use of the word “disseisin” in connection with other than real property, he is referred to Prof. J. B. Ames's articles on *Disseisin of Chattels*, in the *Harvard Law Review*, Jan.–March, 1890.

<sup>2</sup> Sanuto, *Script. Rerum. Italic.*, t. xxii, p. 1189; cited by Hallam, *History of Middle Ages*, chap. ix, part ii.

<sup>3</sup> Bowker, *Copyright*, p. 5.

doubled. In Germany the first privilege was issued at Nuremberg, in 1501. In France the privilege covered but one edition of a book; and if the work went to press again, the publisher had to seek a second patent.

In England, in 1518, Richard Pynson, the King's Printer, issued the first book *cum privilegio*; the title page declaring that no one else should print or import in England any other copies for two years; and in 1530 a privilege for seven years was granted to John Palgrave "in the consideration of the value of his work and the time spent on it; this being the first recognition of the nature of copyright as furnishing a reward to the author for his labor."<sup>1</sup> In 1533 Wynkyn de Worde obtained the King's privilege for his second edition of Witinton's *Grammar*. The first edition of this book had been issued ten years before, and during the decade it had been reprinted by Peter Trevers without leave — a despoilment against which Wynkyn de Worde protested vigorously in the preface to the later edition, and on account of which he applied for and secured protection. Here again is evidence that a man does not think of his rights until he feels a wrong. Ihering bases the struggle for law on the instinct of ownership as something personal, and the feeling that the person is attacked whenever a man is deprived of his property; and, as Walter Savage Landor wrote: "No property is so entirely and purely and religiously a man's own as what comes to him immediately from God, without intervention or participation." The development of copyright, and especially its rapid growth within the past century, is due to the loud protests of authors deprived of the results of their labors, and therefore smarting as acutely as under a personal insult.<sup>2</sup>

The invention of printing was almost simultaneous with the Reformation, with the discovery of America, and with the first voyage around the Cape of Good Hope. There was in those days a ferment throughout Europe, and men's minds were making ready for a great outbreak. Of this movement, intellectual on one side and religious on the other, the governments

<sup>1</sup> T. E. Scrutton, *Laws of Copyright*, p. 72.

<sup>2</sup> Ihering, *The Struggle for Law* (translated by J. J. Lalor).

the time were afraid ; they saw that the press was spreading broadcast new ideas which might take root in the most inconvenient places, and spring up at the most inopportune moments ; they sought at once to control the printing of books. In less than a century after Gutenberg had cast the first type, the privileges granted for the encouragement and reward of the printer-publisher and of the author, were utilized to enable those in authority to prevent the sending forth of such works as they might choose to consider treasonable or heretical. For while, therefore, the history of the development of copyright inextricably mixed with the story of press-censorship. In France, for example, the edict of Moulins, in 1566, forbade any person whatsoever printing or causing to be printed any book or treatise without leave and permission of the King, and letters of privilege."<sup>1</sup> Of course no privilege was granted to publisher or to author if the royal censors did not approve of the book.

In England the "declared purpose of the Stationers' Company, chartered by Philip and Mary in 1556, was to prevent the propagation of the Protestant Reformation."<sup>2</sup> The famous Decree of Star Chamber concerning printing," issued in 1637, set forth :

that no person or persons whatsoever shall at any time print or cause to be imprinted any book or pamphlet whatsoever, unless the same book or pamphlet, and also all and every the titles, epistles, prefaces, poems, preambles, introductions, tables, dedications and other matters and things whatsoever thereunto annexed, or therewith imprinted, shall be first lawfully licensed.

In his learned introduction to the beautiful edition of this decree, made by him for the Grolier Club, Mr. De Vinne remarks, that at this time the people of England were boiling with discontent ; and, "annoyed by a little hissing of steam," the ministers of Charles I "closed all the valves and outlets, but it did not draw or deaden the fires which made the steam ;"

<sup>1</sup> Alcide Darras, *Du Droit des Auteurs*, p. 169.

<sup>2</sup> E. S. Drone, *A Treatise on the Law of Property in Intellectual Productions*, 56.



then "they sat down in peace, gratified with their work, just before the explosion which destroyed them." This decree was made the eleventh day of July, 1637; and in 1641 the Star Chamber was abolished; and eight years later the King was beheaded at Whitehall.

The slow growth of a protection, which was in the beginning only a privilege granted at the caprice of the officials, into a legal right to be obtained by the author by observing the simple formalities of registration and deposit, is shown in a table given in the appendix (page 370) to the *Report of the Copyright Commission* (London, 1878). The salient dates in this table are these:

- 1637. — Star Chamber Decree supporting copyright.
- 1643. — Ordinance of the Commonwealth concerning licensing. Copyright maintained, but subordinate to political objects.
- 1662. — 13 and 14 Car. II, c. 33. — Licensing Act continued by successive Parliaments; gives copyright coupled with license.
- 1710. — 8 Anne, c. 19. — First copyright act. Copyright to be for fourteen years, and if author then alive, for fourteen years more. Power to regulate price.
- 1814. — 54 Geo. III, c. 156. — Copyright to be for twenty-eight years absolutely, and further for the life of the author, if then living.
- 1842. — 5 and 6 Vict. c. 45. — Copyright to be for the life of the author and seven years longer, or for forty-two years, whichever term last expires.

From Mr. Bowker's chapter on the *History of Copyright in the United States*, it is easy to draw up a similar table showing the development in this country:

- 1793. — Connecticut, in January, and Massachusetts, in March, passed acts granting copyrights for twenty-one years. In May Congress recommended the states to pass acts granting copyright for fourteen years, — seemingly a step backward from the Connecticut and Massachusetts statutes.
- 1785 and 1786. — Copyright acts passed in Virginia, New York and New Jersey.
- 1787. — Adoption of the constitution of the United States, authorizing Congress "to promote the progress of science and useful arts by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries."

790. — First United States copyright act. Copyright to citizens or residents for fourteen years, with a renewal for fourteen years more if the author were living at the expiration of the first term.
831. — Copyright to be for twenty-eight years, with a renewal for fourteen years more, if the author, his widow or his children are living at the expiration of the first term.
856. — Act securing to dramatists stage-right ; that is, the sole right to license the performance of a play.
- 873-4. — The copyright laws were included in the Revised Statutes (sections 4948 to 4971).

From the exhaustive and excellent work of M. Lyon-Caen and M. Paul Delalain on *Literary and Artistic Property*<sup>1</sup> we see that France, now perhaps the foremost of all nations in the protection it accords to literary property, lagged behind Great Britain and the United States in taking the second step in the evolution of copyright. It was in 1710 that the act of Anne gave the British author a legal right independent of the caprice of any official ; and as soon as the United States came into being, the same right was promptly confirmed to our citizens ; but it was not until the fall of the ancient *régime* that a Frenchman was enabled to take out a copyright at will. Up to the eve of the revolution of 1789, French authors could do no more, say MM. Lyon-Caen and Delalain, "than ask for a privilege which might always be refused them" (page 8). As was becoming in a country where the drama has ever been the most important department of literature, the first step taken was a recognition of the stage-right of the dramatist, in a law passed in 1791. Before that a printed play could have been acted in France by any one, but thereafter the exclusive right of performance was reserved to the playwright ; and at one bound the French went far beyond the limit of time for which any copyright was then granted either in England or America, as the duration of stage-right was to be for the author's life and for five years more. It is to be noted, also, that stage-right was not acquired by British and American authors for many years after 1791.

<sup>1</sup> La Propriété Littéraire et Artistique: Lois Françaises et Étrangères (Paris, Fichon, 1889, 2 vols.).

Two years after the French law protecting stage-right, in the dark and bloody year of 1793, an act was passed in France granting copyright for the life of the author and for ten years after his death. It is worthy of remark that, as soon as the privileges and monopolies of the monarchy were abolished, the strong respect the French people have always felt for literature and art was shown by the extension of the term of copyright far beyond that then accorded in Great Britain and the United States ; and although both the British and the American term of copyright has been prolonged since 1793, so also has the French, —and it is now for life of the author and for fifty years after his death.

The rapid development of law within the past century and the effort it makes to keep pace with the moral sense of society — a sense that becomes finer as society becomes more complicated and as the perception of personal wrong is sharpened — can be seen in this brief summary of copyright development in France, where, but a hundred years ago, an author had only the power of asking for a privilege which might be refused him. The other countries of Europe, following the lead of France as they have been wont to do, have formulated copyright laws not unlike hers. In prolonging the duration of the term of copyright, one country has been even more liberal. Spain extends it for eighty years after the author's death. Hungary, Belgium and Russia accept the French term of the author's life and half a century more. Germany, Austria and Switzerland grant only thirty years after the author dies. Italy gives the author copyright for his life, with exclusive control to his heirs for forty years after his death ; after that period the exclusive rights cease, but a royalty of five per cent on the retail price of every copy of every edition, by whomsoever issued, must be paid to the author's heirs for a further term of forty years : thus a quasi-copyright is granted for a period extending to eighty years after the author's death, and the Italian term is approximated to the Spanish. Certain of the Spanish-American nations have exceeded the liberality of the mother-country : in Mexico, in

Guatemala and in Venezuela the author's rights are not terminated by the lapse of time, and copyright is perpetual.<sup>1</sup>

To set down with precision what has been done in various countries, will help us to see more clearly what remains to be done in our own. It is only by considering the trend of legal development that we can make sure of the direction in which efforts toward improvement can be guided most effectively. For example: the facts contained in the preceding paragraphs show that no one of the great nations of continental Europe grants copyright for a less term than the life of the author and a subsequent period varying from thirty to eighty years. A comparison also of the laws of the various countries, as contained in the invaluable volumes of MM. Lyon-Caen and Delalain, reveals to us the fact that there is a steady tendency to lengthen this term of years, and that the more recent the legislation the more likely is the term to be long. In Austria, for instance, where the term was fixed in 1846, it is for thirty years after the author's death; while in the twin-kingdom of Hungary, where the term was fixed in 1884, it is for fifty years.

On a contrast of the terms of copyright granted by the chief nations of continental Europe with those granted by Great Britain and the United States, it will be seen that the English-speaking race, which was first to make the change from privilege to copyright and was thus the foremost in the protection of the author, now lags sadly behind. The British law declares that the term of copyright shall be for the life of the author and only seven years thereafter, or for forty-two years, whichever term last expires. The American law does not even give an author copyright for the whole of his life, if he should be so unlucky as to survive forty-two years after the publication of his earlier works; it grants copyright for twenty-eight years only, with a permission to the author himself, his widow or his children to renew for fourteen years more. This is niggardly when set

<sup>1</sup> Here again it may be noted that certain decisions in the United States courts, to the effect that the performance of a play is not publication, and that therefore an unpublished play is protected by the common law and not by the copyright acts, recognize the perpetual stage-right of any dramatist who will forego the doubtful profit of appearing in print.

beside the liberality of France, to say nothing of that of Italy and Spain. Those who are unwilling to concede that the ethical development of France, Italy and Spain is more advanced than that of Great Britain and the United States, at least as far as literary property is concerned, may find some comfort in recalling the fact that the British act was passed in 1842 and the American in 1831 — and in three-score years the world moves.

There is no need to dwell on the disadvantages of the existing American law, and on the injustice which it works. It may take from an author the control of his book at the very moment when he is at the height of his fame and when the infirmities of age make the revenue from his copyrights most necessary. An example or two from contemporary American literature will serve to show the demerits of the existing law. The first part of Bancroft's *History of the United States*, the history of the colonization, was published in three successive volumes in 1834, 1837 and 1840; and although the author has since revised and amended this part of his work, it has been lawful, since 1882, for any man to take this unrevised and incorrect first edition and to reprint it, despite the protests of the author, and in competition with the improved version which contains the results of the author's increased knowledge and keener taste.

At this time of writing (1890) all books published in the United States prior to 1848 are open to any reprinter; and the reprinter has not been slow to avail himself of this permission. The children of Fenimore Cooper are alive, and so are the nieces of Washington Irving; but they derive no income from the rival reprints of the *Leatherstocking Tales* and of the *Sketch Book*, reproduced from the earliest editions without any of the authors' later emendations.<sup>1</sup> Though the family of Cooper and the family of Irving survive, Cooper and Irving are dead themselves and cannot protest. But there are living American authors besides Bancroft who are despoiled in like manner. Half a dozen volumes were published by Mr. Whittier and by

<sup>1</sup> The emendations, having been made within forty-two years, are of course still guarded by copyright.

Dr. Holmes before 1848, and these early, immature, uncorrected verses are now reprinted and offered to the public as "Whittier's Poems" and "Holmes's Poems." Sometimes the tree of poetry flowers early and bears fruit late. So it is with Lowell, whose *Heartscase and Rue* we received with delight only a year or two ago, but whose *Legend of Brittany*, *Vision of Sir Lannfal*, *Fable for Critics* and first series of *Biglow Papers* were all published forty-two years ago or more, and are therefore no longer the property of their author but have passed from his control absolutely and forever.

Besides the broadening of a capricious privilege into a legal right, and besides the lengthening of the time during which this right is enforced, a steady progress of the idea that the literary laborer is worthy of his hire is to be seen in various newer and subsidiary developments. With the evolution of copyright, the author can now reserve certain secondary rights of abridgment, of adaptation and of translation. In all the leading countries of the world the dramatist can now secure stage-right;<sup>1</sup> i.e. the sole right to authorize the performance of a play on the stage. Copyright and stage-right are wholly different; and a dramatist is entitled to both. The author of a play has made something which may be capable of a double use, and it seems proper that he should derive profit from both uses. His play may be read only and not acted, like Lord Tennyson's *Harold* and Longfellow's *Spanish Student*, in which case the copyright is more valuable than the stage-right. Or the play may be acted only, like the imported British melodramas, and of so slight a literary merit that no one would care to read it, in which case the stage-right would be more valuable than the copyright. Or the drama may be both readable andactable, like Shakspeare's and Sheridan's plays, like Augier's and Labiche's, in which case the author derives a double profit, controlling the publication by copyright and controlling performance by stage-right. It was in 1791, as we have seen, that France granted

<sup>1</sup> Mr. Drone uses the word "playright," but this is identical in sound with "playwright," and it seems better to adopt the word "stage-right," first employed by Charles Reade

stage-right. In England, "the first statute giving to dramatists the exclusive right of performing their plays was the 3 and 4 William IV, c. 15, passed in 1853," says Mr. Drone (page 601). In the United States stage-right was granted in 1851 to dramatists who had copyrighted their plays here.

Closely akin to the stage-right accorded to the dramatist is the sole right of dramatization accorded to the novelist. Indeed, the latter is an obvious outgrowth of the former. Until the enormous increase of the reading public in this century, consequent upon the spread of education, the novel was an inferior form to the drama and far less profitable pecuniarily. It is only within the past hundred years, — one might say, fairly enough, that it is only since the Waverley novels took the world by storm, — that the romance has claimed equality with the play. Until it did so, no novelist felt wronged when his tale was turned to account on the stage, and no novelist ever thought of claiming a sole right to the theatrical use of his own story. Lodge, the author of *Rosalynde*, would have been greatly surprised if any one had told him that Shakspeare had made an improper use of his story in founding on it *As You Like It*. On the contrary, in fact, literary history would furnish many an instance to prove that the writer of fiction felt that a pleasant compliment had been paid him when his material was made over by a writer for the stage. Scott, for example, aided Terry in adapting his novels for theatrical performance; and he did this without any thought of reward. But by the time that Dickens succeeded Scott as the most popular of English novelists the sentiment was changing. In *Nicholas Nickleby* the author protested with acerbity against the hack playwrights who made haste to put a story on the stage even before its serial publication was finished. His sense of injury was sharpened by the clumsy disfiguring of his work. Perhaps the injustice was never so apparent as when a British playwright, one Fitzball, captured Fenimore Cooper's *Pilot* in 1826 and turned Long Tom Coffin into a British sailor! — an act of piracy which a recent historian of the London theatres, Mr. H. B. Baker, records with hearty approval. The possibility of an outrage like this still exists in



gland. In France, of course, the novelist has long had the exclusive right to adapt his own story to the stage; and in the United States also he has it, if he gives notice formally on every copy of the book itself that he desires to reserve to himself the right of dramatization. But England has not as yet advanced so far; and no English author can make sure that he may not see a play ill-made out of his disfigured novel. Charles Dickens protested in vain against unauthorized dramatization of his novels, and then, with characteristic inconsistency, made plays out of novels by Anthony Trollope and Mrs. Hodgson Knott without asking their consent. But the unauthorized English adapter may not lawfully print the play he has compounded from a copyright novel, as any multiplication of copies would be an infringement of the copyright; and Mrs. Hodgson Knott succeeded in getting an injunction against an unauthorized dramatization of *Little Lord Fauntleroy* on proof that more than one copy of the unauthorized play had been made for use in the theatre. It is likely that one of the forthcoming modifications of the British law will be the extension to the novelist of the sole right to dramatize his own novel.

## II.

From a consideration of the lengthening of the term of copyright and the development of certain subsidiary rights now required by an author, we come to a consideration of the next step in the process of evolution. This is the extension of an author's rights beyond the boundaries of the country of which he is a citizen, so that a book formally registered in one country shall by that single act and without further formality be protected from piracy<sup>1</sup> throughout the world. This great and useful improvement is now in course of accomplishment; it is still far from complete; but year by year it advances farther and farther.

<sup>1</sup> "Piracy" is a term available for popular appeal but perhaps lacking in scientific precision. The present writer used it in a little pamphlet on "American Authors and British Pirates" rather by way of retort to English taunts. Yet the inexact use of the word indicates the tendency of public opinion.



In the beginning the sovereign who granted a privilege or at his caprice withheld it, could not, however strong his good will, protect his subject's book beyond the borders of his realm; and even when privilege broadened into copyright, a book duly registered was protected only within the state wherein the certificate was taken out. Very soon after Venice accorded the first privilege to John of Spira, the extension of the protection to the limits of a single state only was found to be a great disadvantage. Printing was invented when central Europe was divided and subdivided into countless little states almost independent, but nominally bound together in the Holy Roman Empire. What is now the Kingdom of Italy was cut up into more than a score of separate states, each with its own laws and its own executive. What is now the German Empire was then a disconnected medley of electorates, margravates, duchies and grand-duchies, bishoprics and principalities, free towns and knight-fees, with no centre, no head and no unity of thought or of feeling or of action. The printer-publisher made an obvious effort for wider protection when he begged and obtained a privilege not only from the authorities of the state in which he was working but also from other sovereigns. Thus when the Florentine edition of the *Pandects* was issued in 1553, the publisher secured privileges in Florence first, and also in Spain, in the Two Sicilies and in France. But privileges of this sort granted to non-residents were very infrequent, and no really efficacious protection for the books printed in another state was practically attainable in this way. Such protection indeed was wholly contrary to the spirit of the times, which held that an alien had no rights. In France, for example, a ship wrecked on the coasts was seized by the feudal lord and retained as his, subject only to the salvage claim.<sup>1</sup> In England a wreck belonged to the King unless a living being (man, dog or cat) escaped alive from it; and this claim of the crown to all the property of the unfortunate foreign owner of the lost ship was raised as late as 1771, when Lord Mansfield decided against it. When aliens were thus rudely robbed of their tangible posses-

<sup>1</sup> A. C. Bernheim, *History of the Law of Aliens* (N.Y. 1885), p. 58.

ons, without public protest, there was little likely to be felt y sense of wrong at the appropriation of a possession so tangible as copyright.

What was needed was, first of all, an amelioration of the feeling toward aliens as such; and second, such a federation of the petty states as would make a single copyright effective throughout a nation, and as would also make possible an international agreement for the reciprocal protection of literary property. Only within the past hundred years or so has this consolidation into compact and homogeneous nationalities taken place. In the last century, for example, Ireland had its own laws and Irish pirates reprinted at will books covered by English copyright. In the preface to *Sir Charles Grandison*, published in 1753, Richardson, novelist and printer, inveighed against the piratical customs of the Hibernian publishers. In Italy, what was published in Rome had no protection in Naples or Florence. In Germany, where Luther in his day had protested in vain against the reprinters, Goethe and Schiller were able to make but little money from their writings, as these were constantly pirated in the other German states and even imported into that in which they were protected to compete with the author's edition. In 1826, Goethe announced a complete edition of his works, and, as a special honor to the poet in his old age, the *Bundestag* undertook to secure him from piracy in German territories."<sup>1</sup> With the union of Ireland and Great Britain, with the creation about the kingdom of Sardinia of the other provinces of Italy, with the compacting of Germany under the hegemony of Prussia, this inter-provincial piracy has wholly disappeared within the limits of these national states.

The suppression of international piracy passes through three stages. First, the nation whose citizens are most often deceived— and this nation has nearly always been France— endeavors to negotiate reciprocity treaties, by which the writers of each of the contracting countries may be enabled to take out copyrights in the other. Thus France had, prior to 1852, special treaties with Holland, Sardinia, Portugal, Hanover and Great

<sup>1</sup> G. H. Lewes, *Life and Works of Goethe*, p. 545.

Britain. Secondly, a certain number of nations join in an international convention, extending to the citizens of all the copyright advantages that the citizens of each enjoy at home. Third, a state modifies its own local copyright law so as to remove the disability of the alien. This last step was taken by France in 1852; and in 1886, Belgium followed her example.

The French seeking equity are willing to do equity; they ask no questions as to the nationality or residence of an author who offers a book for copyright; and they do not demand reciprocity as a condition precedent. Time was when the chief complaint of French authors was against the Belgian reprinters; but the Belgians, believing that the ship of state was ill-manned when she carried pirates in her crew, first made a treaty with France and then modified their local law into conformity with the French. These two nations, one of which was long the headquarters of piracy, now stand forward most honorably as the only two which really protect the full rights of an author.

Most of the states which had special copyright treaties one with another have adhered to the convention of Berne, finally ratified in 1887. Among them are France, Belgium, Germany, Spain, Italy, Great Britain and Switzerland. The adhesion of Austro-Hungary, Holland, Norway and Sweden is likely not long to be delayed. The result of this convention is substantially to abolish the distinction between the subjects of the adhering powers and to give to the authors of each country the same faculty of copyright and of stage-right that they enjoy at home, without any annoying and expensive formalities of registration or deposit in the foreign state.

The United States of America is now the only one of the great powers of the world which absolutely refuses the protection of its laws to the books of a friendly alien.<sup>1</sup> From having been one of the foremost states of the world in the evolution of copyright, the United States has now become one of the most backward. Nothing could be more striking than a

<sup>1</sup> If a foreign dramatist chooses to keep his play in manuscript, then the American courts will defend his stage-right; but the foreign dramatist is the only alien author whose literary property is assured to him by our courts.

trast of the liberality with which the American law treats the  
sign inventor and the niggardliness with which it treats the  
sign author. In his *Popular Government* (page 247) the late  
Henry Sumner Maine declared that "the power to grant  
rights by Federal authority has . . . made the American  
people the first in the world for the number and ingenuity of  
inventions by which it has promoted the 'useful arts';  
while on the other hand, the neglect to exercise this power for  
the advantage of foreign writers has condemned the whole  
American community to a literary servitude unparalleled in the  
history of thought."

BRANDER MATTHEWS.

## THE ECONOMIC SCHOOLS AND THE TEACHING OF POLITICAL ECONOMY IN FRANCE.

A RECENT American writer, after justly praising the marked progress of economic science in Germany, expresses himself as follows concerning France :

France has done almost nothing for the evolution of economic science since the outbreak of the French Revolution of 1789. Political economy has in France degenerated into a mere tool of the powerful class. Nothing is so calculated to fill one with despair for France as French political economy. Rabid socialism confronts cold-blooded, selfish political economy, and where is a common standing ground? There is so little economic liberalism in no other modern nation.<sup>1</sup>

This is a severe judgment ; and, unfortunately for us, it is not merely an individual opinion. Many economists, not only in America but also in Europe, would be likely to express the same conclusion, although possibly in a milder form. It is a commonly accepted opinion in the scientific world that the study of economics in France is decidedly on the wane ; that the French genius, which formerly took the initiative in so many fields, and which even in the domain of economics paved the way for Adam Smith, has become barren ; and that her most distinguished economists are something like riding-school horses, well trained, but trained to move continually in the same circle.

With two or three exceptions, French authors are seldom quoted in recent economic works. An examination of the lists of authorities now usually appended to new publications will convince us of this fact. And if by chance a French name is mentioned, it is usually not in very flattering terms. Professor Ingram, in his *History of Political Economy*, gives only a very small place to the French. As for the German

<sup>1</sup> Ely, Introduction to Political Economy, p. 324.

economists, it is an accepted fact with them that the French economists are trifling and superficial, adroit in extricating themselves from tight places, but incapable of deep or original thought and unable even to understand German science.

There is indeed a certain element of injustice in this verdict,—the injustice which ever condemns the losing side. Nineteen years ago the French sustained an overwhelming defeat. The consequences have been felt not only in the field of politics but in all other domains, even in those where the fortune of war seems to play no part. The defeat of their standards and the humiliation of their soldiers were quite sufficient to impair their prestige throughout the whole world and to react on their industries, their fashions and their language. Their Lyons silk appeared less beautiful, their champagnes less sparkling, their Parisian women less pretty and their economists less learned! And let no one believe that this feeling is confined to the masses. The most distinguished intellects are unconsciously influenced by it. They also are swept along by the irresistible current. All foreigners now flock to the German universities. It is only there that they learn to know French science, which, as we can readily imagine, is not likely to be presented to them in the most favorable light. French science in Europe partly shares the fate of the French republic. It is kept in the background. As an Italian professor very wittily wrote to me lately, the ‘triple alliance’ has been carried into the scientific world.

But making all allowance for the bias of our judges, it must be owned that their judgment contains, unfortunately, far too large an element of truth. It is only too true that for some time, and especially of late years, economic science in France has simply followed the traditions of the old school and has opened out no new vistas to the mind. It is not to be denied that in the economic movement of our day France has played by no means so brilliant a part as in philology, in mathematics, in biology or, above all, in art and letters. Not that she has failed to produce superior men,—men in our opinion equal to those of any other country,—but certain

causes have paralyzed their genius and have prevented it from obtaining those results which a more favorable environment would have secured.

I desire here to investigate as impartially as possible the causes which have impeded the progress of economic science in France, and which have prevented her from occupying a position as prominent as she could rightfully have claimed. This investigation will perhaps be not without benefit to the American public, who, while there is yet time, may learn from our example what dangers to avoid.

## I.

I have just remarked that if the results achieved by French economics have not been what we might expect, it is not for want of men. Let me begin by recalling some of the less familiar names. It is now generally acknowledged that the Physiocrats — or rather, as they were then already called, the Economists — were the real founders of political economy. The time-honored title of father of political economy, conferred upon Adam Smith, is a marked injustice to that phalanx of eminent men, Quesnay, Dupont de Nemours, Mercier de la Rivière, the abbé Baudeau, Letrosne, Turgot, Condorcet, the marquis de Mirabeau. In no other country and at no other epoch has so brilliant a school sprung so suddenly into being, and never perhaps has the science excited an enthusiasm so general and so ardent. The somewhat scornful indifference with which the works of the Physiocrats have been treated, and for which France herself is chiefly to be blamed, will some day be regarded as one of the most striking examples of ingratitude that history offers. Adam Smith himself fully acknowledges his indebtedness to them. It is even said that he would have dedicated his work to Quesnay, if the latter had still been living. Dr. Quesnay's first economic treatise was published in 1756, that is to say, twenty years before the appearance of Adam Smith's great work. This is not the place to analyze or to criticize the theories of the

Physiocrats. I desire only to point out, that although we may tax them with many errors, excusable in beginners, we certainly cannot charge them with want of originality. To cite but one example: the famous system of Henry George which has caused such commotion was taught word for word by the Physiocrats. Henry George acknowledges this himself, although he asserts that he is only indirectly acquainted with their works. "The French economists of the last century," he says, "headed by Quesnay and Turgot, proposed just what I have proposed, that all taxation should be abolished, save a tax upon the value of land."<sup>1</sup>

But we must not believe that the science of economics in France has spoken its first and last word through the Physiocrats, or that it has remained silent for a whole century. It has had since then illustrious exponents of world-wide reputation. It has had other exponents of no less, perhaps even of greater eminence, of whom no one speaks. It is unneces-

<sup>1</sup> Progress and Poverty, book viii, chap. iv. As Mr. George declares that he knows the Physiocrats only at second-hand, and as the same is probably true of many American readers, I reproduce here by way of curiosity one of the passages in which we may find Henry George's doctrine most clearly expounded. The passage is from Mercier de la Rivière's work on The Natural Order of Political Society: "This order may be summed up in two fundamental rules: first, that taxation should not be arbitrary; second, that it should be nothing but the result of the co-ownership of the sovereign in the net produce of the land within its domain. . . . Thus the essential form of the tax consists in taking the tax directly where it is, and in not wishing to take it where it is not. According to what I have stated in preceding chapters, it is evident that the fund out of which the tax is paid cannot be found in the hands of the landowners, or rather of the farmers who in this respect represent them. For they receive this fund from the land itself, and when they turn it over to the sovereign they do not give anything which really belongs to them. It is therefore from them that the tax must be demanded in order that it may not be a burden on any one." ("Cet ordre se trouve tout entier renfermé dans deux règles fondamentales: la première, que l'impôt n'ait rien d'arbitraire; la seconde, *qu'il ne soit que le résultat de la copropriété acquise au souverain dans les produits nets des terres de sa domination*. . . . Ainsi la forme essentielle de l'impôt consiste à prendre directement l'impôt où il est et à ne pas vouloir le prendre où il n'est pas. D'après ce que j'ai dit dans les chapitres précédents, il est évident que les fonds qui appartiennent à l'impôt ne peuvent se trouver que dans les mains des propriétaires fonciers ou plutôt des cultivateurs ou fermiers qui, à cet égard, les représentent; ceux-ci reçoivent ces fonds *de la terre même et lorsqu'ils les rendent au souverain, ils ne donnent rien de ce qui leur appartient: c'est donc à eux qu'il faut demander l'impôt pour qu'il ne soit à la charge de personne.*")



sary to mention the name of J. B. Say, who, in a treatise which has been translated into all languages, first sketched the complete plan of the classic text book of political economy, with its four divisions and its symmetrical arrangement; a plan which has been followed without much change by all writers of text books to the present day. Nor is it necessary to mention the name of Bastiat, the very incarnation of optimistic economics, who displayed in his work an eloquence and an ardor unparalleled in the literature of the science. Nor shall I mention others, *dii minores*, such as Dunoyer, who developed the idea, at that time new, of including among economic goods or wealth immaterial products and services; nor Michel Chevalier, who was one of the first to turn to the economic development of the United States for ideas and illustrations.

But all these economists belong to the classical school — to the school which has exclusively controlled and which to-day still dominates the thought of France. I would say a word of some other dissenting economists who, precisely because of their dissent and of certain reasons that I shall mention later, remained unknown to fame and received a tardy recognition only when at last discovered by foreigners.

The first of these was Condillac, — like Adam Smith a philosopher and an economist, but who, in contradistinction to Smith, was well known as a philosopher and almost unknown as an economist. Nevertheless he published in 1776, simultaneously with the appearance of Smith's famous *Inquiry*, the *Treatise on Commerce and Government*, a work which abounds in profound thoughts, and in which the very recent theory of value, that of relative or final utility, was already clearly demonstrated. Condillac not only shows that the value of commodities depends on their utility, but he proves in addition that this utility is necessarily a function of their quantity.<sup>1</sup> Without doing injustice to the illustri-

<sup>1</sup> As Condillac's work is probably read by Americans even less frequently than are those of the Physiocrats, it will perhaps be of service to quote a few sentences from his theory of value: "Since value is based on wants, it is natural that the

ous Glasgow professor, we may confess that we should look in vain for a similar analysis of value in his *Inquiry*. To be more successful in our search we must skip an entire century until we reach Stanley Jevons, who expresses himself in almost precisely the same words as those of Condillac, quoted in the note, and who moreover gives due credit to his predecessor. Condillac was not exactly a heretic. In his time there were scarcely any separate schools. But he was already a dissenter from the dominant school of the Physiocrats ; and this sufficed to condemn his work and to enable J. B. Say to pass the following summary judgment on it : " Condillac sought to establish a particular system regarding a subject which he did not understand, but there are some good ideas to be found in the midst of this chatter." <sup>1</sup>

The second of these forgotten economists was Dupuit, an engineer. He published in 1846 and 1849, in a periodical well known even outside of France to engineers, but little read by economists, the *Annales des Ponts et Chaussées*, two purely technical articles on transportation. In these articles, in the

more urgent the want, the greater the value of the commodity, and the less urgent the want, the smaller the value of the commodity. Value hence increases with the scarcity of commodities and decreases with their abundance. It may even decrease to such an extent as to disappear entirely . . . for value depends less on the thing itself than on our estimate of it, and this estimate again is in exact ratio to our wants. It rises and falls as our wants themselves increase and diminish. . . . It is not true that in an exchange equal value is given for equal value. On the contrary, each contracting party always gives a smaller value for a greater. Why? Because, since commodities only have a value relative to our wants, what is valuable to one is less so to the other and *vice versa*." (" Puisque la valeur des choses est fondée sur le besoin, il est naturel qu'un besoin plus senti donne aux choses une plus grande valeur et qu'un besoin moins senti leur en donne une moindre. La valeur des choses croit donc dans la rareté et diminue dans l'abondance. Elle peut même dans l'abondance diminuer au point de devenir nulle. . . . Car la valeur est moins dans la chose que dans l'estime que nous en faisons, et cette estime est relative à notre besoin : elle croit et diminue comme notre besoin croit et diminue lui-même." *Traité sur le Commerce et le Gouvernement*, chap. 1. " Il est faux que dans les échanges on donne valeur égale pour valeur égale. Au contraire, chacun des contractants en donne toujours une moindre pour une plus grande. Pourquoi? C'est que la chose n'ayant qu'une valeur relative à nos besoins, ce qui est plus pour l'un est moins pour l'autre et réciproquement." *Ibid.* chap. 5.)

<sup>1</sup> " Condillac a cherché à se faire un système particulier sur une chose qu'il n'entendait point, mais il y a quelques bonnes idées à recueillir dans ce babil."

course of a general discussion on the usefulness of public works, he enters into a remarkable argument of far-reaching importance on utility and value. Under the name of relative utility, he advances a theory of value similar to that already outlined by Condillac, but strengthened by the application of mathematics, — the very theory, in fact, of which in our days Jevons, Walras and Menger all claim to be the discoverers. We have therefore every reason to assert that this great theory, which now seems to have become an integral part of economic science, is really of French origin.

The third, and the one most worthy of fame, although he had barely caught a glimpse of it when death overtook him, was Cournot. He also was at the same time a philosopher and an economist — an economist recognized to-day by the common consent of all those who apply mathematics to political economy as the founder of their method. In a short treatise published in 1838 under the title, *Recherches sur les Principes Mathématiques de la Théorie des Richesses*, Cournot applies integral calculus to the study of the problems of value, as subject alternately to the law of monopoly and to that of competition ; and all this with a power of analysis which unfortunately lies far beyond the mental grasp of the masses, but which has excited the highest admiration amongst those capable of understanding it. Stanley Jevons calls it “wonderful,” and Edgeworth terms it “masterly.” He was one of the first to show the shortcomings of the law of supply and demand as the explanation of value, and also the weakness of the arguments advanced in favor of free trade.

Cournot's work nevertheless remained buried in the gloom of utter indifference, and I do not know that a single copy was ever sold. But twenty years later, attributing his defeat to the dryness of his algebraic formulas, Cournot published another work, in which he reproduced about the same ideas, but divested them of all mathematical forms. Finally, in 1877, he attempted for the third time to imbue the public with his ideas, in a still more elementary form, and prefaced his work with the following melancholy words : “ If again I lose my suit, I shall have left

only the consolation that seldom forsakes the unfortunate — that of believing that the decision rendered against them will one day be set aside in the interest of the law, that is, of truth.”<sup>1</sup> And indeed he lost his suit again. He died soon after, just as the attention of foreigners, at length attracted to his work, was about to “order a new trial” and to recompense him for the indifference of his fellow-citizens. I do not believe that a single journal or review gave him an obituary notice. The *Dictionnaire d'Économie Politique*, published in 1856, does not even mention his name; and yet it gives the biographies, or at least the names, of more than thirteen hundred economists, or authors who have written on political economy!<sup>2</sup>

If I have entered with some detail into the account of Cournot, it is because it throws so clear a light on the peculiar condition of economic science in France. It is clear that circumstances must have been very unfavorable to the growth and development of new ideas, when a man of Cournot's genius, who in any other country would have been an accepted leader, did not succeed in finding a single disciple.

If now we bear in mind that, besides those who in the strict sense of the word were economists, Auguste Comte, the illustrious founder of sociology, was a Frenchman; and that of the four great socialists of the first half of the century, Fourier, Owen, St. Simon and Proudhon, three were French, — we shall soon convince ourselves that in the social sciences as elsewhere, France has at no period been wanting in vigorous thinkers, and even in men well fitted to be leaders. Even at the present day, if we count only the living, France may boast of an array of economists as numerous and as brilliant as those of any other country. I may cite the names of MM. Paul Leroy-Beaulieu, de Molinari, Courcelle-Seneuil, Levasseur, Léon Say, Baudrillart, Frédéric Passy and Maurice Block. I may cite others less well

<sup>1</sup> “ Si je perds encore une fois mon procès, il ne me restera que la consolation qui s'abandonne guère les disgraciés: celle de penser que l'arrêt qui les condamne sera un jour cassé dans l'intérêt de la loi, c'est-à-dire de la vérité.” *Revue Sommaire des Doctrines Économiques*.

<sup>2</sup> As for Dupuit, the *Dictionnaire* mentions his name and the title of his two essays, nothing more. To Condillac the *Dictionnaire* devotes a somewhat lengthier

known but equally worthy of fame ; as, for example, M. de Foville, who has treated statistical subjects with remarkable clearness and intelligence ; M. Juglar, who has made a specialty of predicting economic crises ; M. Pigeonneau, the author of a very remarkable history of French commerce ; M. Claudio Jannet, who has written, among other works, one on the United States of to-day, which has gone through numerous editions ; M. Cheysson, one of the organizers of the section of social economy which met with such well-earned success at the Exhibition of 1889. Besides these, there are in the universities, in the socialistic school and in the Catholic school, others whom I do not name for fear of indefinitely extending my list. All or nearly all are distinguished writers, and some are eloquent orators. If it be true that their works are distinguished by the peculiarly French qualities of clearness, precision and good sense, rather than by depth of thought, still we shall not find them wanting in patient research and broad views.

Thus we find ourselves brought back, but with increasing perplexity, to the question which was propounded at the outset. If France always had, and still has distinguished economists, why does she not occupy a place worthy of herself in the economic movement of to-day ? Why, when we hear everywhere of the "German school" and of the "English school," — and, of late, even of the "Austrian school" and of the "American school," — is the "French school" never mentioned ?

## II.

There certainly is a school in France. But by what name shall we call it ? The classical or orthodox school ? Not exactly ; for if it has preserved the method and the framework of the classical school, it has rejected any number of its theories, even the most important ones, such as the Ricardian

article, gives him an honorable rank "among the popularizers" (these are the actual words), and blames him only for some errors on the subject of value, especially "for having caused serious confusion between value and utility."

theory of rent, the wage-fund doctrine and, in many cases, also the law of Malthus. M. Leroy-Beaulieu, in the preface to his *Essai sur la Répartition des Richesses*, goes so far as to maintain that the whole classical theory of distribution must be reconstructed.

The liberal school? In one sense, yes, because it always adopts for its motto *laissez faire, laissez passer*. But certainly it is not liberal, if we take that sense of the word which suggests broad ideas and tolerance of contrary opinions; for in this respect no school has shown itself more illiberal, more narrow, more rigidly sectarian. What Dr. Ely has said is entirely true: "There is so little liberalism in no other modern nation."

The deductive school? This term would not be appropriate; for many of its most distinguished exponents are statisticians rather than economists, relying on facts alone and priding themselves on being practical men. If only they had shown some little inclination toward general propositions and the deductive method, we should not blame them. We feel much more tempted to blame them for not having given even a modest place to the deductive method *par excellence* — that method which had begun to take such firm root in France, but which was to be transplanted to foreign countries, — the mathematical method.

Its proper name is the optimistic school. The assumption is that, if the actual condition of things is not very good, it is at least the best possible; the fixed determination to seek a justification for the economic organization as it exists in all its main lines, such as private property in land, freedom of industry, competition, the wages system; the resolve to oppose all efforts which look to a serious modification of these institutions, — such are the chief characteristics of the school. M. Leroy-Beaulieu, after half a century, simply follows in the footsteps of Bastiat, although he has repudiated the latter's doctrines. The words are different, but the tune is the same. The one, in his *Harmonies Économiques*, sets himself the task of proving that all existing inequalities in property may be traced back, and are directly proportionate, to differences in individual labor;

and that these inequalities, after all, are insignificant beside the benefits which nature lavishes freely and equally upon all. The other, in his *Essai sur la Répartition des Richesses*, which has just been mentioned, develops the thesis that the existing inequalities among men are much less than they seem, and that their tendency is to disappear gradually through the mere working of natural laws and of free competition, — an assertion which, I fear, the economic evolution of the United States is far from confirming. If this school rejects certain laws which the orthodox writers consider fundamental, — such as that of Ricardo, that of Malthus or the wage-fund theory, — it is precisely because these laws have a pessimistic character, because they do not present the existing state of society or its future prospects in a favorable light. If, on the contrary, certain other classical doctrines, such as the fall in the rate of interest,<sup>1</sup> are warmly defended by the French school, it is because these laws present human affairs in a more hopeful light.

It is natural that this school, convinced of the excellence and the permanence of the present economic order, should oppose as useless and harmful all attempts to change it in any of its essential characteristics; not only when the change is sought through state interference, as by regulating labor, establishing protectionist duties or fixing the price of bread or meat, but also where changes are attempted through private initiative, where the appeal is to freedom, and where a school that professes to be liberal might well be expected to show sympathy. The attitude of the French school on these questions proves it to be more optimistic than liberal. Its members are almost unanimous, for example, in opposing and deriding co-operation, as soon as it aims at productive association and the elimination of the employer. They accept co-operation only in so far as it confines itself to reducing the expenses of the workmen and securing them pensions in case of need.

But why has the dominant school in France encased itself in such complacent optimism? It is certainly not owing to

<sup>1</sup> M. Leroy-Beaulieu makes this doctrine the basis of his argument that the inequality of human conditions is tending to decrease.



ardness of heart or cold egotism, as Dr. Ely erroneously believes. Bastiat was one of the most generous of men, and I do not think that any one of our contemporary economists is insensible to the sufferings of his fellow-beings. Perhaps their attitude may be explained, in part at least, by a feeling very common among the ruling classes in France — by the desire to avoid all the burning questions of economics, all the questions whose discussion might awaken in the minds of the people too great and too dangerous hopes. Their watchword is: "Add no fuel to the flames." In a country like ours, where successive revolutions have weakened all the springs of the political machine, but until now have left the wheels of the economic organization intact, we feel the more keenly the necessity of clinging to all those institutions which we regard as the bases of the actual social order, and which we fondly believe to be indestructible. A further explanation may perhaps be found in a certain lack of philosophic and scientific education, natural among men who for the most part are not mere closet philosophers, but men of action, and who are therefore ill-prepared to accept the scientific method of the day, that of evolution. Accustomed, like the old economic school, to study economic phenomena from a static point of view, they do not easily accept the idea that, from now on, not only social phenomena, but all kinds of phenomena, must be studied, to borrow the terms of Auguste Comte, not from the static but from the dynamic point of view; not only in their relations of co-existence, but in their order of succession; not simply in a state of permanence, which is visionary, but in a perpetual becoming, which is real.

However, there is no reason to lament over the fact that France has had a conservative and optimistic school. Such a school has its distinct place in all countries. But what we must explore is that this school has become so completely dominant as to have overshadowed all others and stifled all new and promising germs of thought. This is the most interesting point in the present discussion, and one which cannot be understood without special explanation. If it were simply a question of accounting for the absence of the new historical school, my task



would be an easy one. The explanation would readily be found, either in a natural reaction against a school of German origin which has attained its highest development since the war of 1870, or in the peculiar temperament of the French people, which, because prone to general propositions and eager to arrive at exact conclusions, is averse to the method of the historical school. For this method requires patience, research and cautious experiment, and purposely abstains from all foregone conclusions and hasty generalizations. We can therefore readily understand why neither Brentano nor Schmoller succeeded in founding a school in France. But the facts noted do not explain why neither professorial socialism, nor Christian socialism, nor the sociological school, nor even the mathematical school, which through its character and origin seemed particularly adapted to the French genius,—why, in one word, no other school but the one we have described has been able to take root in French soil. Nor do they explain why, in place of the happy and fruitful competition which has been introduced in all other countries to the manifest advantage of science, we find in France a régime of monopoly for the benefit of the very school which condemns monopoly.

The reasons, I think, are as follows.

In the first place, political economy had, until recently, no place in the French system of university instruction. I mean that there was no course of instruction in political economy, holding a distinct place in the curriculum of higher education side by side with other sciences, and entrusted to a distinct body of professors. It is well known that our universities are very differently organized from those of other countries. Entirely reconstructed by Napoleon I, with that love of uniformity and of symmetry which characterizes the French genius and which characterized his in particular, the universities of to-day in the twelve or fifteen principal cities of France are composed of four faculties, law, medicine, science and letters, each with a number of chairs fixed by law and corresponding to the number of subjects officially selected for the examinations. Such at least was the case until the recent reforms, which intro-

iced the system of *chargés de cours*—a system somewhat analogous to that of the *privat-docenten* in Germany. The consequence was that none of the new sciences—nor any of the older sciences, even, which were not already included in these securely barred departments of law, medicine, natural science and letters—could gain the right of domicile in the university. There was no place for them. Such was the case with archaeology, anthropology, pedagogy, statistics, the science of finance and, in particular, political economy.

Only very recently has it become possible to crowd these different courses into corners into which they do not fit, by adding each of them to the faculty with which it has most in common. Not until 1878 was political economy joined to the faculty of law, and we shall see that precisely this step marked a new era. Until then political economy had been taught only in a few chairs outside of the university—chairs which may be considered purely ornamental. Of such character is the chair of the *Collège de France*,<sup>1</sup> rendered famous formerly by J. B. Say, Rossi and Michel Chevalier, and to-day by M. Paul Leroy-Beaulieu—a chair which never educated disciples, nor even attracted regular students. It is a public course of lectures, where strangers in Paris come to listen as they would pass an afternoon at the Louvre or an evening at the Comédie Française, it whose regular attendants are a few young women who wish to add the finishing touches to their education, and some poor devils who come in winter to keep warm and in summer to keep cool, and at all times to sleep. Besides this, we find chairs of political economy in certain technical schools like the *École des Mines*, the *École des Ponts et Chaussées*, the *École des Arts et des Métiers*, the *École des Hautes Études Commerciales*, where the instruction in economics has a purely practical character, and is little attended by the pupils because it occupies a very unimportant place in the examinations. The chair of political economy in the *École libre des Sciences Politiques* is more important,

<sup>1</sup> The Collège de France, founded by Francis I, does not constitute, properly speaking, a part of the university, since it has no regular students, holds no examinations and confers no degrees.

but it was founded only in 1872. These different chairs have been confided to very able men, who were already well known through their writings but who had never belonged to the university, and to whom a professorship always remained a thing of minor importance, something like a benefice, a title both lucrative and honorary, bestowed on the few lucky ones in favor at court.

Now I consider it a necessary condition of the development of any science, that the instruction should come from a university, and that it should be given by a body of professors especially devoted to the work, to the exclusion of all technical or professional aims. My reasons are as follows. The man who devotes himself to political economy, for example, as a writer or a publicist is concerned only in having his books or articles read. He tries to gain the public ear. In order to do this he follows the stream and adopts the doctrines generally accepted. The professor, on the contrary, is not obliged to seek a public. He has it always with him in the students who attend his lectures or read his books. His ambition — at least the ambition of all professors worthy of the name — is to strike out into new paths on which a few disciples may follow. To be original is thus his great aim; not to follow the crowd, but on the contrary to discover something which none of his colleagues has hit upon before. Doubtless this mental attitude gives rise to many petty rivalries, many puerile quarrels of precedence. But taking all things into consideration, it may be said that this rivalry between professors of the same country or even of different countries, all united by the fraternity of interests which naturally binds men devoted to the same pursuits, and yet separated by desire for individual distinction, is wonderfully favorable to scientific progress. It is precisely this stimulus which has been lacking in France until this day. Moreover, nothing is so conducive to the mental training of the student, or so favorable to the formation of a new school by the teacher, as oral instruction. The Greeks, certainly good judges in matters of education, always made use of it. The best known French economists were and are to-day statesmen, financiers, journalists, politicians,

philanthropists. They are not professors, or they are only secondarily professors; and it is precisely because they are not scholastic that they cannot create a school. Had Cournot been a professor in a university, he probably would have founded a school; at any rate, he would not have waited forty years to become known.

The second cause to which I shall call attention is the existence of the Institute — *l'Institut de France*. Foreigners cannot realize the invisible and all-powerful influence that this body exercises. Could they grasp it, it would serve them as the key to many of the mysteries of our literary and scientific life. It is well known abroad how great is the prestige of the French Academy, to which the most revolutionary and uncompromising writers, like Zola, finally bow and humbly beg for admission. But the Academy is only a part of the great body known as the Institute. The latter includes, besides the Academy, five sections: *les Sciences Morales et Politiques*, *les Inscriptions et Belles Lettres*, *les Sciences*, *les Beaux Arts* and *la Médecine* — covering, as we see, the whole field of human knowledge, and exercising to the remotest limits of this vast domain a positively baneful attraction. Not that the institute is of little worth; it is far from my desire to detract from it. Doubtless it includes some mediocre members; but they form the exception. Doubtless also there have always been outside of its pale many men of genius; but that also is exceptional. After all, it can rightfully claim to have represented for the past three centuries the intellectual élite of France, and I think that no learned association in any other country has such a golden book. But just here lies the trouble. Precisely because it is composed of eminent men, it wields a wide and unfortunate influence. Were it composed of fools, it could do no harm.

Let us see how this influence is exerted. Let us consider only the field of political economy; first, because it is with this field that we are at present concerned, and also because it is here that the influence of which I speak is most strongly felt. Let us take a young man who wishes to pursue the study

of political economy. Naturally he tries to gain some reputation. He consults a placard posted in most of the public institutions, which contains a list of subjects for competition at the Institute. This list, renewed annually or, for certain prizes, every two or three years only, is very long. In fact, the Institute is exceedingly rich, and controls several million francs of income dedicated solely to these prizes. It must be said, parenthetically, that the French, unlike the Americans, do not care to bequeath money to institutions of public instruction or public utility. But they make an exception in favor of the Institute, towards which they show themselves very liberal and generous. The reason is, perhaps, that each prize bears the name of the donor, thus procuring him a certain kind of immortality. The section of the moral and political sciences alone distributes annually about 60,000 francs, divided into thirty prizes varying from 1000 to 12,000 francs each. But to return to our young economist. He glances over this long list and makes his choice, knowing beforehand who will be his judges. These, the members of the section of political economy, eight in number, all belong, without exception, to the school of which we have spoken above. The contestant knows beforehand that, whatever the merit of his work, it will not secure the prize unless it agrees with what are called sound economic doctrines; that is, unless it accepts and even defends private property, capital, the wage system, freedom of industry, free trade *etc.* The Institute does not desire—and we can well understand this attitude by putting ourselves in its place—to commit itself to doctrines which it deems dangerous to the public order by stamping them with its official approval and thus recommending them to the world. It proposes to reward only those works “which will do good.” Our young candidate goes to work with a full comprehension of these facts. He devotes himself conscientiously to the works published by the members of the Institute who are to sit in judgment on the topic which he has selected. He attempts to treat it in such a manner as not to offend them. Whatever originality he may possess, he employs in seeking new arguments favor-

e to the traditional doctrines. After revising this memoir, sends it to the Institute, where he stands a good chance being rewarded. As the subjects are very numerous (thirty, I have said), there are not many competitors for each prize; generally only two or three; a few more if the prize is one the more important. Besides, the Institute in a spirit kindness often divides the prizes among the competitors. Formerly, it is true, the award was postponed to another year, if the articles submitted seemed unworthy.) Let us take it for granted that the article has received the prize. It is then immediately published, with this notice printed on the cover: "Crowned by the Institute"; and the fortunate candidate bears forever after the title, *Lauréat de l'Institut*.

The year following, encouraged by his first success, he turns to the attack. There are professors who thus win prizes five or six years in succession; which, besides the honor conferred, represent a not inconsiderable increase in the income of a young man struggling to make his way. From this time forward our young economist does not change his opinions. He retains throughout his life the impressions received in his youth. The switchmen of the Institute have placed him on the track, and he keeps the rails to the end of the journey. Once well on in years, he ceases to compete for prizes. But then his ambition changes its form without changing its character. He aspires now to become a member of the Institute. To attain this end, he has one more step to take. He asks permission to make communications to the Institute. That is to say, on the day of the meeting he arrives with a manuscript under his arm, which he obtains permission to read aloud. Of course he endeavors to treat his subject in such a way as to arouse, not to please, for the illustrious assembly never applauds, but at least a "murmur of approbation" or even "some visible marks of satisfaction." This places our economist in personal relations with the members of the Institute, his judges of to-day, his electors of to-morrow. He may present himself at the

next vacancy, that is at the death of one of the Immortals.<sup>1</sup> The first time he may have only one or two votes. He awaits a second vacancy and will then see the number of votes increase to six or seven. Patiently he waits for a third vacancy, and if he does not die in the interval he will be elected. Thus will he have achieved the supreme aim of his life, that to which he looked forward from his earliest days. *Hoc erat in votis*. Now he can die content.

But all do not attain their aim. Many die, like Moses, after only looking at the promised land from afar, not having been permitted to enter it. But even if all cannot enter, all turn their gaze towards it. Whosoever devotes himself to literary pursuits in France fixes his eyes from the very beginning of his career and through all the stages of his life upon the cupola of the Institute, as does the true Mussulman on the Kaabah of Mecca. When young, it is there he looks for instruction; arrived at maturity, it is there he seeks fame; and in his old age, it is there that he awaits his highest rewards.

I was accordingly justified in speaking of the attraction exercised by this great body. Everything in fact, revolves about it. From it come light and heat — I mean scientific renown and high official position — for all the satellites that encircle it. If I may be permitted to continue the metaphor, I would say that if by chance some insubordinate planet were to set itself free from this centre of attraction, it would be condemned to darkness, like those outsiders in our solar system called comets, who wander from the sun only to be buried in eternal night. This was the history of Dupuit and of Cournot, who never were members of the Institute or even laureates; and this is doubtless the history of others who have not even succeeded in handing down their names to us. M. Walras, professor at Lausanne, who is now one of the leaders of the mathematical school, is a Frenchman by birth and began his career in France. But he was obliged to seek a foreign home at the little university of Lausanne, in surroundings more favorable to his teachings. I

<sup>1</sup> In strict usage, of course, the title of Immortal is reserved to the members of the Académie Française.



not mean to say that any one of the men whom I have mentioned has been the object of a systematic hostility — not at all. They never were persecuted, — one can arm oneself against persecutors, — they were simply ignored, which is worse.

The school of the Institute, moreover, possesses certain nexes that greatly increase its influence. I shall mention three which are closely connected with it: the Political Economy Club (*la Société d'Économie Politique*), the *Journal des Économistes*, and the publishing house of Guillaumin.

The *Société d'Économie Politique* was founded in 1842. It meets once a month at a banquet, and during dessert some question in political economy is discussed. It is composed of two hundred and fifty elected members, economists and publicists, most all of whom belong to the liberal school. At all events, these are the only ones who take part in the debates. The result is an exaggerated harmony which renders these discussions very monotonous. There is, however, one opponent, a single one, an old Fourierist, M. Limousin, who is warmly received because he brings the little grain of pepper that relieves the dulness of this economic feast.

The *Journal des Économistes* with its yellow cover is well known. Founded in 1841, this review is the venerable dean of the journals of political economy that are published throughout the world. (The Tübinger review dates from 1844 only.) Until fifteen years ago, this was the only review of political economy in France, and to-day, we believe, it has still the greatest number of readers, or at least subscribers, which is not quite the same thing. It enjoys the respect due to its years and to its constant fidelity to liberal traditions. It looks down, with the pride of fallen aristocracy, on all the young and noisy schools that are beginning to raise a commotion around it. For the most part it ignores their existence, and a close perusal of its numbers would lead one to believe that for fifty years nothing has changed in the world.<sup>1</sup>

<sup>1</sup> The *Économiste Français*, of much more recent birth, is the journal of M. Leroy-Beaulieu. It devotes itself to practical questions, like the London *Economist*, but it is edited in the same spirit as the *Journal des Économistes*, or in a spirit even narrower.



The *Librairie Guillaumin* is not merely a publishing firm. It occupies an important place in the history of economic doctrines in France, and forms by no means the least curious part of this history. It has made a specialty of publishing economic works, and under an able management has gradually become a veritable monopoly. Books, collections, dictionaries have left its presses by the thousands during the past half century, and have diffused its wholesome orthodox doctrines, not alone throughout France, but through those foreign countries which pay more or less attention to our literature. Not that it does not occasionally issue heretical works when it finds its interest in so doing; for instance, it published lately a translation of Henry George's *Progress and Poverty*; but this is the exception. Its *Bibliothèque des Sciences Morales et Politiques* is far from showing in this respect such scientific impartiality or such breadth of treatment as the fine Italian collection known as the *Biblioteca della Economista*. With the exception of Thünen and Roscher, not a single German economist is represented in the French collection, and even Stanley Jevons is not to be found there. For years the *Librairie* has been presided over by two amiable spinsters, two sisters (only one survives at present), and its money affairs are managed by the chief personages of the liberal school as silent partners. While defending good doctrines, it does good business—a rare coincidence in this world. This little floor in the Rue Richelieu forms a curious nook in Paris, serving at the same time as the publisher's shop, as the editorial rooms of the *Journal des Économistes*, as the secretary's office of the *Société d'Économie Politique*, and as a place of *rendezvous* for foreign economists on their way through Paris. It is also a nursery for young economists, who are trained there for editors, followers of correct principles, all destined to become one day laureates of the Institute, perhaps even academicians.

If now the reader will kindly observe that the same persons are at once members of the Institute, partners of the house of Guillaumin, editors of the *Journal des Économistes*, presidents or vice-presidents of the *Société d'Économie Politique*,

they will readily solve for themselves the problem which was stated a short time ago : Why has there been but one school in France during the last half century ? The reason is, that there was no possible place for any other. Shut up in the Institute as in a citadel, protected by the three institutions just spoken of as by so many outworks, the liberal school held all the roads leading to honor, to official position and even to the attention of the public. It could readily believe and make the people believe that it represented the true science, the whole science and the only science, and that its future was inseparably connected with the future of political economy. Like the Physiocrats of old, its followers called themselves "the economists," and in the meetings of the Political Economy Club such questions as this were gravely discussed : "Can one be an economist and a protectionist at the same time ?" or again : "Can one be a socialist and call himself an economist ?"

Such a condition of things could not last forever without causing the death of all economic science in France, and even the death of the dominant school itself. This school in fact suffered from the absence of all competitors and experienced in itself, although without knowing it, a law which it understood so well how to demonstrate in its teachings, namely, that all continued monopoly is in the long run injurious to the monopolists themselves. Little by little it lost its sap and its fertility. Constantly recruiting itself from the same set, and, so to say, from the same families, it could not infuse into itself any fresh blood. I once heard, from one of the most eminent representatives of the classical school, this sad avowal, in which there was more truth than vanity : "After us, they will find no one for the Institute." In fact, the rising generation of economists of the classical school appear, as far as we can judge, to be by no means the intellectual compeers of the present generation.

It might have been feared that the classical school, after exhausting the soil in its vicinity, would finally disappear leaving nothing behind it ; like those gigantic trees which, during a long life, blight with their shade the undergrowth, and when

at last they fall, leave on the ground about them an empty, barren circle.

Fortunately for the future of economic science in France, a reaction was setting in, which was destined to change the position of affairs. In order to complete this essay, I have only to explain this movement.

### III.

The first movement of reaction against the liberal school dates back about thirty years. It was initiated by M. Le Play in the publication of his *Ouvriers Européens* in 1855, and by the founding of the *Société d'Économie Sociale* in 1856. M. Le Play, a mining engineer, after thirty years of travel devoted at first to technological studies and later to social researches, founded the school which still bears his name and which marked the first breath of dissent.

This school did not at the outset assume an attitude hostile to the classical school. The *Ouvriers Européens* was even crowned by the Institute, and since then the two schools have been on good terms. Like the liberals, the school of Le Play opposes state intervention, defends the principles of order and ownership and maintains the wages system, corrected only by the recognition of corresponding duties on the part of the employer. Nevertheless, since its origin, it has been separated from the liberal school upon several points of vital importance. In the first place it is not optimistic. It does not believe that the economic organization of modern society is good. It utterly disbelieves that the individual, left to himself, always finds out what is most conducive to the welfare of all or even to his own welfare. Starting with the Christian doctrine of the fall of man, it has no confidence in man's natural instincts, and it expects him to be kept in the right path, if not by the state, at least by the family, by the ruling classes or by religion. It endeavors then to re-establish all these authorities, that of father of the family, that of the employer (*le patron*) and that of the church. Thus it sets its face in quite a different direc-

n from the liberal school, manifesting a marked Catholic and politico-conservative spirit, whilst utterly disclaiming it.

Besides, its object is not so much political economy as social science; that is, it considers it indispensable not to separate the questions of wealth from those of morals, of legislation and of government. It aims less at the greatest possible production of wealth than at the spread of what it calls by the fine name "social peace." Finally, it rejects the deductive method and aims to rely only on the observation of facts. It practices this method of induction in a very picturesque manner, quite new and invented by Le Play, *viz.*, monographs of workmen's families. More than a hundred of these monographs, drawn from all countries, have already been published under the title of *Ouvriers Européens* and *Ouvriers des Deux Mondes*, — and the publication is to be indefinitely continued.

Besides these different works, already very numerous and constituting by themselves a special library, the school of Le Play publishes two reviews. One is the *Réforme Sociale*, dealing especially with all those questions of economic legislation and history which relate to the condition of the working classes, the state of landed property, to the system of inheritance, *etc.* The other is the *Science Sociale*, less known than the preceding, which endeavors to formulate the social laws, and contains some suggestive (although a little too systematic) *aperçus*, particularly in relation to the influence of environment and geographical conditions on the formation of different societies. Besides the *Société d'Économie Sociale*, which meets in Paris and whose discussions are generally much more interesting than those of the *Société d'Économie Politique* spoken of above, the school has branches which spread all over France under the name of *Associations de la Paix Sociale*, and recruit themselves chiefly from amongst the Catholic party.

But the spirit of dissent which, in Le Play's school, never led to a complete schism from the orthodox school, was not slow in assuming a more distinctly aggressive character. A new school, more Catholic or rather more ultramontane than Le Play's, hoisted the banner of Christian socialism and entered

boldly upon a campaign against the liberal school. It pronounces the liberal school execrable, and condemns it as responsible for all the ills from which modern society suffers. It proclaims as the sole means of salvation a return to corporate organization in the economic world and a return to provincial organization in the political world. It insists, with Cardinal Manning, upon state intervention for the protection of the working classes. Its anathemas and its demands have found an eloquent interpreter in the Count de Mun, whose votes in the Chamber of Deputies have more than once been cast in the same box with those of the socialist members. For a dozen years it has maintained a review, the *Association Catholique*; and almost everywhere in France it has organized societies, under the name of *Cercles Ouvriers*, which bear a character rather political and religious than social, and which withal do not extend very rapidly.

The socialist school had undergone a long eclipse after the revolution of 1848, and was even supposed to have entirely disappeared. The *Dictionnaire d'Économie Politique*, referred to above, went so far as to say in 1854 that "to speak of socialism was to deliver a funeral oration." But it revived after the war of 1870 and the uprising of the Commune. Some ardent young men, imbued with the theories of Karl Marx (one of them, Lafargue, was his son-in-law), disseminated collectivistic ideas in various journals and even founded in 1880 a *Revue Socialiste*, which did not live. But the review reappeared under the same name in 1885, under the direction of M. Malon, a much more moderate socialist, — a collectivist, but not of the Marx school. Nevertheless, although M. Malon is a conscientious and erudite worker, and although several other socialists, as for example Jules Guesde, have real oratorical power, we may say that the socialist school in France lacks men of talent. For this reason, and for others which it would take too long to explain here, it has not wielded, either in theory or in practice, so great a power as might have been expected. In France there are a certain number of revolutionists, and a crowd of radicals, but hardly any socialists, although the radicals deck

themselves willingly with this title as a feather in their caps. Still, although it be merely a matter of show, this new fashion contributes also to render the doctrines of the liberal school antiquated and unfashionable.

But the heaviest blow dealt to the liberal school came precisely from the party opposed to the socialists ; I mean from the side of the landed proprietors, the manufacturers and capitalists. France had always been protectionist, — I believe wrongly so, at that is neither here nor there. Held down by the strong hand of Napoleon III since 1860 under a system of commercial treaties, negotiated more or less from the free-trade point of view, she had never forgiven the economists whom she accused of instigating this *coup d'État*. In fact, Cobden and Michel Chevalier had prepared the treaties and carried them into execution. Accordingly, at the beginning of the protectionist movement, called forth in Europe about 1876 by the importation of American wheat and inaugurated by Prince Bismarck, the landowners and manufacturers immediately revenged themselves for their long restraint by overwhelming the economists with a deluge of reproaches. All the agricultural journals, all the agricultural societies, all the agricultural congresses loaded the economists with scorn, calling them disdainfully closet economists, that is, men who know nothing of the world outside of their closets. So great was the storm that the most liberal economists, the most determined champions of free trade, were obliged to withdraw under shelter and *laissez faire, laissez faire* the torrent of protectionism which would have submerged them. One of the most prominent leaders of the free-trade school — the son-in-law of that very Michel Chevalier who had negotiated the treaty of commerce of 1860 — is known to have accepted the presidency of an association of landowners, whose object was to abolish all commercial treaties and to levy prohibitory duties on foreign wines. I mention this fact simply because it is characteristic. It is only fair to add, as an extenuating circumstance, that the economist in question had presented himself to the electors as a candidate for deputy in one of the interested departments.

Finally, in a sphere entirely removed from that of practical interests, in that of pure speculation, some philosophers, attracted by the social problems, studied them in a very different spirit from that of the liberal school and reached conclusions scarcely orthodox in character. Thus M. Alfred Fouillée, in his work on *La Propriété Sociale et la Démocratie*, questioned the too absolute character of private property in land; and M. Renouvier, the founder of the philosophic school known by the name of "Criticism," ended by acknowledging a right to labor (*droit au travail*) as compensation for those members of society who find themselves, from the mere fact of their birth among the poorer class, shut out on all sides from national wealth. I do not speak here of M. Secrétan, the professor at Lausanne, who came to the conclusion that the wages system must ultimately disappear; for this philosopher, although widely read in France, is not French.

Thus during the past few years, the classical school has seen heavy storm clouds gathering in all quarters of the horizon. Religious beliefs, revolutionary unrest, material interests, philosophic speculations — all apparently combined to work against it, but without greatly disturbing its self-confidence. In truth there was nothing very alarming in these attacks. These adversaries had long been known, and had always been overcome. Since its birth, so to say, the liberal school had been obliged to combat the conservatives of the old régime, the socialists and the protectionists. This was its mission, this was its battle-flag. It sincerely believed, it is true, that it had left those enemies dead on the field; and it is always a disagreeable surprise to see those whom you think you have slain, rise once more and brandish their weapons. But after all, the reigning school had only to begin over again. Its lofty position, both scientific and official, did not appear to be in danger. It retained all its strongholds. The enemy surrounded it, but there could be no real peril unless they forced their way through its defences.

It was the liberal school itself that introduced the enemy into its own stronghold. Here indeed may be said: *Quos vult perdere dementat Jupiter!* This is one of the most curious



isodes in this history. To make it clear some explanations are necessary.

I have already mentioned the fact that up to 1878 political economy had no place in the regular plan of university instruction. The economists of the dominant school rightly considered this a sad gap. They thought that if they could install themselves in the university and teach their liberal doctrines there, they would find it easy to train the younger generation in their ways. They proposed to create a chair of political economy in each faculty of law. They hesitated a little, as one does before making a leap in the dark. The proposition was adopted in the *Conseil Supérieur de l'Instruction Publique* by a majority of only one. However, the reform was effected, and from this time political economy had its distinct place in the official curriculum and in the examination programme of the thirteen faculties of law which exist in France.

The economists never doubted for one instant that these new chairs would be entrusted to veritable economists, that is to say, to men imbued with sound doctrines and educated in their school. Moreover they had their candidates all ready : in fact, they had designated them. Only one point had been forgotten, namely, that according to the university statutes no one can fill a chair in a law faculty, unless he is qualified as *agrégé en droit* or, in some exceptional cases, simply as *docteur en droit*. The former title can be obtained only after eight or ten years' study exclusively devoted to the Roman and French law. Doubtless, it may seem ridiculous enough to require such an apprenticeship for a professor of economics, who will never have to deal with French or Roman law. But such is the law ; *dura lex, sed lex*. And the faculties of law, jealous of their prerogatives, would not allow their gates to be forced open. Now, not one of the candidates of the economists was an *agrégé en droit*, and only two or three were doctors. The consequence was that most of the newly created chairs in economics had to be confided, not to economists, but to young jurists, brought up in the study of the Pandects and of the Code Napoléon, but without the faintest idea of economics. They were thus compelled to study



and teach at the same time. They entered upon their work with minds entirely free from preconceived ideas. They were truly new men, belonging to no school. Naturally they commenced by reading the works of the classical economists, the library of the *Maison Guillaumin*. But most of them did not stop here. Their legal studies, above all in Roman law, had familiarized them with the German Romanist literature, and especially with the historical school of jurisprudence of which Savigny was the most famous representative. They were therefore naturally inclined to consult the German economic literature and disposed to understand and to approve of the same historic method applied to economics. It must be remarked, moreover, that a young man who has studied law seriously for ten years, is naturally led to magnify the office of the law-maker. He will be little apt to accept the principle of the liberal school, which maintains that the fewer the laws the better, and that to have no laws whatever were best of all. A lawyer will not be apt to relish the doctrine of *laissez faire*. It is necessarily antipathetic to his modes of thought. In all times and in all countries, but perhaps more distinctly in the history of France than elsewhere, the lawyers have been the natural supporters of the government and even, in a certain sense, the founders of the modern state. Finally, we must note as an important fact that the jurists naturally bring to bear on all questions, economic as well as other questions, the consideration of justice. Justice rather than liberty is what they seek to develop in social relations. Differing from the economists of the classical school, who studied chiefly the production of wealth, they are rather inclined to study its distribution, adopting for their rule the noble maxim which appears in the rules of Ulpian, which all law students learn by heart: *Justitia est constans et perpetua voluntas jus suum cuique tribuendi*.

The new professors of economics in the faculty of law were thus drawn, by their intellectual training and even by their profession, into a path opposite to that of the liberal school. The new movement is that known as professorial socialism, a movement into which their colleagues across the Rhine have

ound themselves forced by virtue of almost the same causes. A few remained faithful to the traditions of the liberal school, but others separated themselves from it with a great deal of noise. The professor of economics in the Paris faculty, M. Cauwès, was the first to publish his lectures in 1880. He denied the existence of natural laws in political economy, declared it necessary to deal above all with economic legislation and, adopting the system of List, showed himself a staunch protectionist. This book created an immense scandal in the camp of the classical economists. The venerable *Journal des Économistes* forgot all reserve and overwhelmed the author with positive insults. Attempts were even made to drive M. Cauwès from his chair, but without success.<sup>1</sup> Three years later another professor of economics, in the Montpellier law faculty, published his lectures, which were not much less heretical, although in a different way. The author admitted the existence of natural laws and upheld the cause of free trade. But on the other hand he analyzed in a rather unfriendly way the legitimacy of private property in land, criticized very energetically the system of competition and expressed some doubts as to the permanence of the wages system. Some other young professors expressed themselves very freely in their lectures, or in newspaper articles. Finally in 1887 one of them took the initiative and founded a journal known as the *Revue d'Économie Politique*, having among its editors and contributors all the professors of economics in the faculties of law, even those who were more closely in touch with the classical school. The editors of this review have not pretended to found a school, properly speaking. This would be a presumptuous mistake, considering the slight authority and the different opinions of its principal editors. They merely wished to have an independent organ for themselves, where all views could be freely expressed. With this object in view, they made an appeal to all the teachers of the different economic schools abroad, who for the most part have responded in a very friendly manner. They merely under-

<sup>1</sup> M. Cauwès in fact has since quitted the chair of political economy, although of his own accord. He fills to-day the chair of legal history.

took what I shall call a work of hygienic cleansing; dusting energetically the moth-eaten economic furniture, opening wide the doors and windows to freshen the musty atmosphere, and introducing a flood of sunshine and pure air from the four corners of the world.

Nothing can describe the consternation of the liberal school on finding itself thus betrayed by the very men whom it intended to use as tools. It asked, in amazement, whence came all these mutineers? But, after a little storming it changed its tactics, and resolved to remain silent in future in regard to this unfortunate episode. By a tacit agreement among the leaders of the liberal school, it was decided that the professors of economics in the law faculties were simply presumptuous young men, utterly ignorant of what they were employed to teach, and that their dissent was of small importance and not to be mentioned in good society<sup>1</sup> — “Much ado about nothing.”

But this policy of indifference, which had heretofore been so successful in stifling all dissent, could no longer meet with the same success. The professors of economics in the faculties of law found in the numerous students who attended their lectures (there are not less than five to six thousand law students in France) an audience — a public — that could not be taken from them. They found their support in their colleagues at home and abroad, and in the publishers. In vain had their books been put on the *index expurgatorius* of the liberal school. Their publications came from the press none the less rapidly. And if we remember that all the men in France who are to fill the positions of judges, of lawyers, of administrative officials, and the still greater number of those who are preparing for public life, — if we remember that all these must sit on the benches of the schools of law, we shall readily perceive that the movement begun in these schools is by no means one to be disregarded.

Unfortunately, the law-schools have rather too professional a

<sup>1</sup> Evidence of this tendency can be found in the article of M. de Foville on The Economic Movement in France, in the *Quarterly Journal of Economics*, January, 1890. Cf. especially (p. 224) the way in which he speaks of the faculties of law.

character. They serve to form officials or statesmen, but seldom erudite scholars. For this reason, the instruction in economics will perhaps not result in so great an intellectual emancipation as might be hoped for. It will not readily adopt so purely scientific a character nor so liberal a method as that of the German universities, where it is placed not in the faculty of law but in the faculty of philosophy or, in some of the newer universities, in a special faculty of political science. To be impartial, I must add, moreover, that although the faculties of law include some distinguished professors of political economy, up to this time they have not produced an economist of sufficient talent or prominence to counterbalance the authority of the leaders of the orthodox school; and the same may be said, in fact, of all the other dissenting schools. Of course we must allow them a little time.

To sum up, it may be said that for some years past a very active economic movement has been going on in France which, taking all things into consideration, is full of promise. We may say that there is now as much economic activity in France as in any other country. There are no less than seven general economic journals — Germany, we believe, has but six — which represent, although unequally, all the principal schools, and which may be classed in their chronological order as follows: the *Journal des Économistes* (1842), the *Économiste Français* (1873), the *Association Catholique* (1876), the *Réforme Sociale* (1882), the *Science Sociale* (1886), the *Revue Socialiste* (1886), the *Revue d'Économie Politique* (1887). There is also a large number of special reviews, such as the *Annales de l'École des Sciences Politiques*, the *Annales Économiques*, the *Revue des Institutions de Prévoyance*, the *Devoir* (organ of the "Famillistère" of M. Godin, now deceased), the *Christianisme Pratique* (founded by an association of Protestant divines), the *Revue Économique de Bordeaux*, the *Bulletin de la Société de Statistique*, the *Idée Nouvelle* (organ of the Marxist school), five or six co-operative or mutualist journals, etc. Moreover, there is no important literary review or political paper without several

editors in charge of economic questions. There are three or four societies of political economy in Paris, one in Lyons, one in Bordeaux. The public, in all social classes, in all political parties, in all religious sects, takes a burning interest in economic and social questions. All this augurs well. In the light of these facts, I am unable to endorse the melancholy assertion made recently by M. de Foville: "We must admit that political economy in France has lost, during the past ten years, much of the ground which it had gained in earlier years."<sup>1</sup> Not at all! It is not political economy which has lost during the past ten years; it is only the orthodox school, which is by no means the same thing. On the contrary, all the ground which it has lost has been a distinct gain for the science.

Now, what is to be the outcome of this confused medley? Shall we witness the birth of some great economist or of some great school like that of the Physiocrats? And will the science of economics in France, after the lapse of a hundred years, blossom forth anew, like the plant which, if tradition is to be trusted, flowers but once a century? A not distant future will tell us.

CHARLES GIDE.

<sup>1</sup> The Economic Movement in France, *Quarterly Journal of Economics*, January, 1890.

### THE TAXATION OF CORPORATIONS. III.

**T**HE discussion of corporation taxation would be incomplete without an examination of the various phases of duplicate taxation. This is all the more necessary for the reason that no attempt at a thorough analysis has ever yet been made. And yet the problems that hinge about this particular subject are so especially important in the United States as to demand the most serious attention.

What is meant by double taxation? Double taxation in the wider sense exists when the same or different persons are taxed twice upon the same source, whether this be property, income or any other element. Thus if two different persons like mortgagor and mortgagee are assessed on the same piece of land, it is double taxation. Or if the same person is taxed by two different states or localities on his income and on the property from which the income is derived, this again is double taxation. It is a mistake, however, to think that all duplicate taxation is necessarily unjust. Much confusion has arisen on precisely this point. Double taxation is unjust only when the principle of equality is violated. This is usually, but not necessarily the case. We can ascertain the limits of the principle only by analyzing separately each of the various kinds of duplicate taxation.

There are in reality no less than five different forms of double taxation in the case of corporations. These are :

1. Double taxation of property and debts or of income and interest on debts.
2. Double taxation of property and income.
3. Double taxation of property and stock.
4. Double taxation arising from interstate, intermunicipal or foreign complications.
5. Double taxation of the corporation and the holders of stock or bonds.

Three of these forms, it will be perceived, are applicable also to individuals, as well as to corporations. Let us discuss them in order.

### VII. *Double Taxation of Property and Debts.*

This first point need not detain us long. It applies in this country only to the general property tax, which we have discarded as the basis of corporation taxation. Moreover, in the case of individuals this means practically the question of taxation of mortgages and book debts, which has been discussed in a previous article.<sup>1</sup> Finally, in so far as corporations are concerned it has been pointed out<sup>2</sup> that there is really no injustice at all in not exempting corporate indebtedness. The issue of mortgage bonds by a corporation is simply another mode of increasing the working capital. Correct policy demands the taxation of corporate bonds as well as of stock, of loans as well as of share-capital. To tax corporate debts may indeed be called double taxation in so far as the tax on both property and debt is paid out of the same income; but if so, it is double taxation of a perfectly legitimate kind. It is here that the principles of individual and corporation taxation diverge.

Some of the Swiss cantons, like many of the American commonwealths, recognize this distinction between the taxation of individuals and that of corporations, by permitting the deduction of indebtedness from the property of individuals but refusing a like deduction in the case of corporate property. Such *e.g.* is the system in St. Gallen, Zürich, Ticino, *etc.*<sup>3</sup>

Perhaps more interesting and probably of greater future importance in the United States is the other phase of this question of the taxation of indebtedness — double taxation of income and interest on debt. While the true theory of income taxation in the case of individuals necessarily demands the deduction of interest on debts, it has already been shown that in the case of corporations the interest paid on mortgage bonds

<sup>1</sup> The General Property Tax, *POLITICAL SCIENCE QUARTERLY*, V, 1 (March, 1890), p. 32.

<sup>2</sup> *Ibid.* V, 3 (Sept., 1890), p. 452.

<sup>3</sup> Schanz, *Die Steuern der Schweiz*, II, 338; II, 435; IV, 281.

must be included in the taxable income.<sup>1</sup> Taxation of interest on corporate debt is not double taxation, because the coupons, like the dividends, are integral parts of the income; because both bonds and stock together form what is really the working capital from which the income is derived. This whole question, however, has already been discussed. The radical difference in economic significance between a corporate bond and an individual debt must be continually borne in mind.

### VIII. *Double Taxation of Income and Property.*

This second form of double taxation, like the first, involves no very complicated question; nor does the solution present any difficulties. Is it permissible to tax a corporation both on its property and on its net receipts or income? If corporations are put upon the same plane as individuals, then the simultaneous taxation of the property and of the income from the property works no injustice. If all are treated alike, it makes no difference in this respect whether there is one single high tax on property, or a low tax on property and another low tax on the profits of the property. In fact, the government would be perfectly justified in taxing the property and the income of the property and the expenses of the property and any other attribute of the property. And all these duplicate or triplicate axes are perfectly reasonable as long as they fall equally on all. Taken together, they simply amount to a high rate for a single tax on the property. As was intimated above, double taxation is not always wrong. It is unjust only when one taxpayer is assessed twice while another in substantially the same class is assessed only once. It is the inequality of taxation that instinctively shocks us. If the tax is uniform, if all persons within the class are equally subjected to the burden, no

<sup>1</sup> The great defect of the otherwise admirable study of Heckel, *Die Einkommensteuer und die Schuldzinsen* (1890), is the failure to distinguish between corporations and natural persons. He indeed is forced to the practical conclusion that corporations must be liable for the tax on mortgage debts, but his arguments are weak and inconclusive; cf. p. 182. The only sound argument is the one used in the text, — the fundamental distinction between corporate bonds and individual debts.



complaint can be lodged with justice against this sort of double taxation.

As this particular problem is not peculiar to corporations, its more extended consideration may be deferred to another place. So far as corporations are concerned, it is not a matter of practical importance. The only case in which this special question has arisen in the United States was under the laws of Alabama, now repealed, which provided for the taxation of corporate property and also of the corporate income during the preceding year.<sup>1</sup> Such taxation was upheld on the ground that it was only apparently double taxation.<sup>2</sup> What the court meant was, of course, not that it was not double taxation, but that it was not invalid or economically unsound taxation. And in this the court was perfectly correct. For the law applied equally to all individuals and corporations.

At present in the United States no attempt is made to tax simultaneously both corporate property and corporate income.<sup>3</sup> The nearest approach to the practice is the Pennsylvania and New York system of taxing the capital stock and also the gross receipts of certain corporations. No objection has ever been raised to these taxes on the score of double taxation; nor is it likely that such an objection ever will be raised. One might as well object to a combination of direct and indirect taxes as to duplicate taxation, on the ground that all taxes are in the last resort paid (or presumed to be paid) out of annual income. But this objection would be manifestly absurd. This second form of double taxation is thus entirely proper.

The classic home of double taxation of this sort is Switzerland. As has been shown repeatedly in the preceding essays, Switzerland has become so conscious of the manifold defects of the general property tax as to have added to it with increasing rapidity in the various cantons a tax on incomes. In this

<sup>1</sup> Ala. laws of Feb. 22, 1866; Feb. 19, 1867; Dec. 31, 1868; March 19, 1875; March 6, 1876.

<sup>2</sup> Board of Review *vs.* Montgomery Gas Light Company, 64 Ala. 276. Cf. Lott *vs.* Hubbard, 44 Ala. 593.

<sup>3</sup> The question as applied to individuals, as *e.g.* in the Massachusetts income tax, will be discussed elsewhere.

respect corporations are in most cases treated like individuals. Baselstadt, *e.g.*, taxes corporations one per mill on the paid up capital, a quarter of one per mill on the capital not yet paid up, and one per cent on the total net income from all sources.<sup>1</sup> In Baselland corporations are taxed on their general property and again on their total profits, with the sole exception that when any of the profits consist of interest on capital the profits are not taxed if the capital has already been assessed.<sup>2</sup> Many of the cantons, however, seek to avoid the simultaneous taxation of property and income by a curious arrangement of the following sort. While the law provides for the assessment of both property and income, a deduction is made in the case of the income tax for so much of the income as is supposed to represent the actual profits of the capital already taxed. The proportion thus deducted is fixed in accordance with the estimated current business interest, ranging from four per cent in Thurgau and Grisons to five per cent in Zug, Schaffhausen, Ticino, Vaud and Zürich. The federal government deducts five per cent.<sup>3</sup> Bern and St. Gallen are the only cantons which attempt to draw a sharper line by levying the property tax only on the corporate real estate, but subjecting all the other property to an income tax.<sup>4</sup> In St. Gallen the real-estate tax is for local purposes, the income tax for cantonal purposes.

The solution of the supposed difficulty attempted by the majority of the Swiss commonwealths is, however, not a happy one. The deduction from income of the four or five per cent, presumed to represent the earnings of property, involves a misconception. It is impossible to say how much of the income represents earnings of capital and how much represents the other ingredients of profit. We are brought face to face with complicated questions of economic theory — with the distinction between interest and profits, and the separate distinct ingredients of profits. A discussion of these knotty questions lies, of course, beyond the province of this essay. But it may be confidently

<sup>1</sup> Law of 1889, §§ 2, 3. Schanz, *Die Steuern der Schweiz*, II, 84; V, 50.

<sup>2</sup> Schanz, *op. cit.* I, 55; V, 35.

<sup>3</sup> *Ibid.* I, 56.

<sup>4</sup> *Ibid.* II, 318, 368; III, 292.

asserted that if a railway corporation with no bonded indebtedness and a capital of one million dollars earns seventy-five thousand dollars, it is absolutely impossible to maintain that fifty thousand dollars represents the earnings of the property and the remainder represents the earnings of the management. From one point of view all profits are profits on capital or property. An individual indeed can obtain a professional income without any capital. But in the case of a business with capital invested, it is impossible to say how much of the profits are due to the capital, how much to the personal management. Without the capital there would be no profits at all, because there would be no business. Therefore, in taxing profits we are really taxing property, or rather the proceeds of property. To segregate a part of these proceeds, and to say as do the Swiss cantons that only this particular part represents the income from the property, is an entirely arbitrary proceeding.

Again, it cannot be contended that this four or five per cent of income exempted by the Swiss laws represents only the interest on the capital, and that the remainder of the income represents only the earnings of management. For under no theory of economic profits can the surplus above current interest be entirely dissociated from capital. Even granting that a sharp line can be drawn between interest, earnings of management and profits, it still remains incorrect to confine the proceeds of capital to interest alone. It is thus inadmissible to say that in taxing income only on the surplus above four or five per cent of the taxable capital we are not taxing both property and income.

The Swiss system indeed has a very decided significance in connection with an entirely different matter, *viz.*, the question of funded or unfunded income. But as regards the point now under discussion it is evident that the Swiss cantons do not really succeed in avoiding double taxation. As we have seen, however, it is a form of double taxation which is perfectly legitimate.

### IX. *Double Taxation of Property and Stock.*

This third form of duplicate taxation must not be misunderstood. It does not refer to the taxation of shares of stock in the hands of individuals. That is a far more intricate problem, and falls under the fifth heading, to be discussed below. The point here is this: Is it permissible to tax the corporation on its property and again on its capital stock?

The answer is plain. Manifestly not, if the corporate stock can be regarded as representing actual property. We have, indeed, seen that it is a mistake economically to say, as do some of our courts, that the entire property of a corporation is identical with its capital stock. This point has been brought out so well in a Massachusetts case, and is so generally misunderstood, that it may be wise to make a more extended quotation from the decision:

The market value of the shares of a corporation . . . does not necessarily indicate the actual value or amount of property which a corporation may own. The price for which all the shares would sell may greatly exceed the aggregate of the corporate property, or it may be all very far short of it. Undoubtedly the amount of property belonging to a corporation is one of the considerations which enter into the market value of its shares; but such market value also embraces other essential elements. It is not made up solely by the valuation or estimate which may be put on the corporate property, but it also includes the profits and gains which have attended its operations, the prospect of its future success, the nature and extent of its corporate rights and privileges, and the skill and ability with which its business is managed. In other words, it is the estimate put on the potentiality of a corporation, on its capacity to avail itself profitably of the franchise, and on the mode in which it uses its privileges as a corporate body, which materially influences and often controls its market value.<sup>1</sup>

But while it is perfectly true that capital stock and total property are not interchangeable terms, it cannot be denied that the capital stock of a corporation represents at all events a

<sup>1</sup> *Commonwealth vs. Hamilton Manufacturing Company*, 12 Allen, 303. Cf. my preceding article, *POLITICAL SCIENCE QUARTERLY*, V, 3 (Sept. 1890), p. 447.

part of its property, or rather that the corporate property is one of the elements that contribute to the value of the capital stock. If this be true, then an increased tax on the corporation on account of its stock is *pro tanto* duplicate taxation of an unjust character. If other persons are taxed only once on their property, corporations should not be taxed again on what is at all events a part of their property.

Unfortunately there is no absolute uniformity in our legal decisions on this point. While the majority of the commonwealths hold taxation of this kind to be unjust duplicate taxation, Pennsylvania has pronounced it perfectly valid. In a celebrated case the court used this language :

Double taxation has never been considered unlawful in this state. The real and personal property of a corporation may be taxed, although it pays a tax on the stock which purchased it. The power of the legislature is as ample to tax twice as to tax once, and it is done daily as all experience shows. Equality of taxation is not required by the constitution.<sup>1</sup>

Such a decision may be correct legally, but beyond all doubt it is unsound economically. Equality of taxation may not be required by the constitution of Pennsylvania, but it is one of the first and most cardinal laws in the whole science of finance. Abandon equality, and you throw the door wide open to all kinds of glaring abuses. The Pennsylvania view cannot possibly be upheld from the scientific standpoint.

Far wiser are the Maryland courts, which hold that all laws must be so construed as to avoid double taxation of this kind ; and that, since in their opinion the capital stock of a corporation represents the corporate property, the payment by the corporation of a tax on capital stock necessarily exempts all the corporate property.<sup>2</sup> In this broad form the decision is perhaps open to criticism because of the complete identification of capital stock with corporate property. But as regards the point at

<sup>1</sup> *Pittsburgh etc. R.R. Co. vs. Pennsylvania*, 66 Pa. State, 77. Cf. *Lackawanna Iron Co. vs. Luzerne County*, 42 Pa. State, 424.

<sup>2</sup> *County Commissioners vs. National Bank*, 48 Md. 117. Cf. *State vs. Stirling*, 20 Md. 520; *State vs. R.R. Co.*, 40 Md. 22.

ue here, it is perfectly correct. To tax corporations simultaneously on their stock and on their property is wholly indefensible. And a few commonwealths, like Maryland, Illinois, Alabama and (for local purposes) New York, have now recognized this principle in their statutes, deducting from the value of the capital stock the value of the realty or of both the real and personal property taxed.<sup>1</sup>

On the other hand, the apparently similar statute of Massachusetts, which taxes corporations on their capital stock less the value of the real estate and machinery,<sup>2</sup> is indefensible for quite another reason. According to the Massachusetts law, corporations are taxable locally only on their real estate and machinery, while they are taxable for commonwealth purposes wholly on the value of the capital stock deducting the value of the real estate and machinery. Corporations are therefore taxed only once on their total property. Individuals on the other hand pay not only a tax on general property for state purposes, but another general property tax for local purposes, — not to speak of the income tax. Corporations thus are treated more leniently than individuals. According to the theory developed in the preceding essays corporations should always be locally taxable on their realty. But the commonwealth tax could be levied on the total income or, if the states will still persist in the property tax, on the total property without any deductions (except those arising from considerations of interstate comity and equity, to be discussed below). My whole treatment of double taxation is based on the assumption that the double tax is levied by administrative units of the same grade, whether states or local divisions. It manifestly does not apply to cases where one tax is levied by the commonwealth, and another similar or different tax is levied by the county or city, as in Massachusetts. Otherwise we should be forced to the conclusion that our property tax always involves a duplicate,

<sup>1</sup> Md. law of 1878, in Pub. Gen. Laws, art. 81, §§ 84, 85, 141-144; Ill. Rev. Stat. p. 120, § 3, sec. 4; Ala. Code, § 453, sec. 8; New York, Laws of 1857, chap. 456, § 1, vol. 2, p. 1. In New York, as we know, corporations are locally taxable on their realty, and also on their capital stock, deducting the amount invested in real estate.

<sup>2</sup> Mass. Pub. Stat. chap 13, § 40.

triplicate or quadruplicate taxation in so far as state, county, town and village levy different rates on the same property. But this is only a juggle with words. Such taxation is not in the scientific sense double taxation. Strictly speaking, therefore, the Massachusetts principle while ostensibly sound is really incorrect.

In Switzerland, the only other country in which the property tax exists, we find, in the few cases where both tangible property and capital are assessed, that the value of the taxable property is deducted from the corporate capital. Thus the new constitution of 1885 in Aargau provides for the taxation of the corporate real estate for both commonwealth and local purposes. The value of the realty is then deducted from the capital stock.<sup>1</sup> So also in Schaffhausen.<sup>2</sup> The Swiss tendency, like the American, is gradually coming to be in accord with the sounder principles.

We come now to the most important aspects of double taxation — the fourth and fifth forms. Here we have the benefit of a wide European experience. In the phases of duplicate taxation hitherto treated we can learn very little from Europe, because in no European state except Switzerland are the corporations taxed on their property as a whole; and in Switzerland the whole question of corporation law is in a far more inchoate condition than in the more developed industrial states. But the problems that we take up now present themselves in Europe as well as in this country, and have there received in some points an extended consideration, although not a completely successful solution.

#### *X. Double Taxation arising from Interstate, Intermunicipal or Foreign Complications.*

This fourth form of duplicate taxation appears in connection with almost every method of corporate taxation. It is so comprehensive that it will be advisable to discuss the subject under four chief headings :

<sup>1</sup> Schanz, *Die Steuern der Schweiz*, II, 239.

<sup>2</sup> *Ibid.* II, 170 (note 1).

- A. Double taxation of corporate property.
- B. Double taxation of stock and bonds or of dividends and interest.
- C. Double taxation of non-resident stockholders or bondholders.
- D. Double taxation of corporate receipts or income.

A. *Interstate double taxation of corporate property.* The difficulty here arises in connection with the taxation of personal property. In the case of real estate the rule universally adopted in the United States is that the property should be taxed where it is situated. There is accordingly no chance for interstate complications. But in the case of personalty the great problem is that of *situs*. Should the personalty be taxed where it is situated or should it follow the domicile of the owner? The legal conditions in the United States are chaotic.

As a general rule the personalty of individuals, if actually located in a state, is taxable there.<sup>1</sup> Yet in most commonwealths the legal fiction prevails that personalty follows the owner—*mobilia personam sequuntur*. This rule is certainly applicable to choses in action and all other intangible personalty. Accordingly, if the owner is a non-resident, the result will be a double taxation of his personal property, once by the state where it is located and again by the state of his residence. A few commonwealths indeed have provided by statute for the exemption of a resident's personalty if permanently located and taxed in another state. Such is now the law in Connecticut, Indiana, Maine, New Jersey, Rhode Island, South Carolina, Vermont and West Virginia.<sup>2</sup> The same rule has been extended by judicial interpretation to Illinois, Kansas,

<sup>1</sup> Cooley on Taxation, 2d ed. (1886), 373, 374. See especially *Coe vs. Errol*, 116 U. S. 517, where the court terms this an "elementary point."

<sup>2</sup> Conn. Gen. Stat., secs. 3828-3830 (applies only to property actually invested in merchandising or manufacturing); Ind. Rev. Stat., sec. 6287; Me. Rev. Stat., tit. i, sec. 14, § 10; N. J. Rev. Stat. [1877], p. 1151; R. I. Pub. Stat., chap. 42, sec. 9 (applies only to machinery, machine tools, stock in trade, merchandise, lumber, coal and stock in livery stables); S. C. Rev. Stat., chap. 12, sec. 1; Vt. Rev. Laws, sec. 270; W. Va. Code, chap. 29, sec. 48. (Cf. on this point Moore, Corporate Taxation, in *American Law Review*, 1884, p. 766.)



Missouri, New York and Ohio.<sup>1</sup> In other commonwealths the rule is applied only in part. Thus in Arkansas, South Carolina and Virginia a similar exemption is made for all personalty except in so far as money, credits or investments in business are concerned.<sup>2</sup> Again in Delaware only so much of the personalty is exempt as consists of non-productive securities of other commonwealths.<sup>3</sup> Finally in Michigan all the personalty of a resident is taxable except that which is invested in another commonwealth.<sup>4</sup> But in most of the commonwealths the legal fiction still prevails, and the individual is taxed on all his personalty irrespective of its location. The obvious result, of course, is double taxation of a nature which cannot possibly be justified.

In the case of corporations, we are confronted by precisely the same difficulties. For corporate property is treated in the main like that of individuals. It is entitled to the same exemptions and subject to the same conditions. It will be readily perceived, however, with what difficulties the problem is beset when, as is usually the case, the personalty of a corporation is assessed at its place of business as the legal *situs*. In Michigan, indeed, it has been held not permissible to tax corporations for property outside the state.<sup>5</sup> And in South Carolina the tax is specifically limited to corporate property within the state.<sup>6</sup> But in general the rule is the same as in the case of the property of individuals—a rule leading to double taxation with all its attendant injustice.

Manifestly, if the commonwealths will still cling to the policy of taxing the actual corporate property, the only logical and

<sup>1</sup> *Mills vs. Thornton*, 26 Ill. 300; *Fisher vs. Commissioners of Rush County*, 19 Kan. 414; *State vs. St. Louis County*, 47 Mo. 594; *People ex rel. Hoyt vs. Commissioners*, 23 N. Y. 224; *Carrier vs. Gordon*, 21 Ohio, 605. Cf. for the practice and cases up to 1871, (First) Report of the (New York) commissioners to revise the laws for the assessment and collection of taxes (1871), pp. 130-147.

<sup>2</sup> Ark., Mansfield's Digest, sec. 5048; S. C. Gen. Stat., chap. 11, sec. 149; Va. Code, sec. 492.

<sup>3</sup> Del. Laws 1879, chap. 2.

<sup>4</sup> Mich. Laws 1885, no. 153, sec. 2.

<sup>5</sup> *State Treasurer rel. vs. Auditor General*, 46 Mich. 224.

<sup>6</sup> S. C. Rev. Stat., chap. 12, sec. 28.

st method is for each state to exempt so much of the corporate property as is already taxable in another state. The proposition is too obvious to require any proof. The federal government has unfortunately not exercised its right to compel such uniformity, if indeed it possesses any such right — a question of grave doubt. Our only hope, therefore, lies in the progress of the commonwealth conscience. Until then we shall still be confronted by the present chaos.

*B. Interstate double taxation of stock and bonds or of dividends and interest.* The evils arising from the simultaneous taxation by different states of the same corporate stock or bonds have been so patent as to lead to statutory changes and judicial interpretations of considerable importance. In Pennsylvania, after being long the custom, it has now been judicially decided to be the law that the tax on capital stock applies not to the whole capital but only to such a proportion of the capital stock as is employed, either actually or constructively, within the state.<sup>1</sup> In New York, the original statute attempted to follow the old rule. But the law has now been so amended as to provide expressly for the taxation of only so much of the capital stock as is employed within the state.<sup>2</sup> In a case which arose under the old statute, although decided after the passage of the amendment, the Court of Appeals declared itself forced to adhere to the old rule.

It is extremely hard and unjust, . . . but we are unable so to construe the statute as to relieve it [the corporation] therefrom. . . . The justice of such a basis of taxation has finally been recognized by the legislature.<sup>3</sup>

The principle in both these commonwealths now applies equally to domestic and to foreign corporations. In Massachusetts, where the tax is applicable only to domestic corporations, no such distinction is drawn. The general corporation tax is levied here on the total capital stock irrespective of its employment.

<sup>1</sup> *Commonwealth vs. Standard Oil Company*, 101 Pa. State, 119. As to the previous custom, *etc.*, see *Decisions of the Auditor-General for 1878-80*, p. 296.

<sup>2</sup> *New York Laws of 1885*, chap. 501, p. 858.

<sup>3</sup> *People vs. Horn Silver Mining Co.*, 105 N. Y. 76, esp. 88. Decided in 1887.

So far as railroads are concerned, it has become the common practice in this country to assess only so much of the capital stock as is represented by the proportion of the mileage in the state to the total mileage. The same rule is observed in those cases when both stock and bonds are taxable, as in Connecticut. Such a standard, while not perfectly exact, is perhaps as nearly accurate as can be attained. And it has been upheld as an entirely constitutional method.<sup>1</sup> This principle of mileage is applicable equally to telegraph companies and to other transportation companies. And in such cases it is gradually being introduced, although not quite so commonly as in the case of railroads, in all those states which tax capital stock directly. The principle is a sound one.

For other corporations, however, it will readily be seen how vague is the New York and Pennsylvania doctrine of "capital employed within the state." What business firm or corporation with ramifications all over the country can tell exactly or even approximately how much of its capital is "employed" within any one state? And even could they tell, how many of them will tell, if concealment will enable them to evade the tax? In some of our commonwealths the state officers have the right to inspect the books of the corporation and to change the assessment if they deem it too low. But even then, what guarantee is there that they will discover the real proportion? The taxation of so much of the capital as is employed within the state is a difficult problem to solve.

It is interesting to notice a recent New York decision on this point. A Massachusetts corporation—a telephone company—was taxed in New York by apportioning the whole capital according to the proportionate number of telephones used in the state. Although the whole tax was declared invalid for another reason, *viz.* that the corporation was not technically doing "business" in the state, the court entered into a discussion, *obiter* indeed, of the question with which we are dealing here. Chief Justice Ruger used the following language:

<sup>1</sup> Delaware Railroad Tax Case, 18 Wall. 208; Erie Railroad *vs.* Pennsylvania, 21 Wall. 492.

It is by no means clear that the mode adopted . . . produces a correct result. . . . We are quite unable to sanction a principle which would subject it [the corporation] to the liability of being taxed, not only in the state] where it is located, as it undoubtedly would be under the law as laid down by us [in the Horn Silver Mining Company case], on its entire capital stock and gross earnings ; but also in each state of the Union in which it should own telephones on such proportion of its capital stock and gross earnings as the law-makers of such state saw fit to impose.<sup>1</sup>

It is difficult to see the justice of this conclusion. It happens to be true that Massachusetts still follows the incorrect and inequitable plan of taxing the whole capital. But that is no excuse for the New York court to interpret the old statute in the same way, or to assume that other states will also follow the precedent which the court itself pronounces "extremely hard and unjust." Two wrongs do not make a right. In the absence of any federal law regulating the subject, the only upright course for each commonwealth to pursue is to follow the dictates of interstate comity and the sound principles of the science of finance by taxing only so much of the corporate capacity as is economically speaking within its jurisdiction. As we have repeatedly said, the taxation of corporate stock is by no means the ideal method. But if the New York principle of taxing capital stock and gross earnings be nevertheless followed, it is difficult to discover any more practicable or more defensible method of ascertaining the due proportion of capital stock employed or gross profits earned within the state than by considering the number of, or royalties from, the telephones used. It is analogous to the Connecticut system of proportional mileage as applied to railroad companies. And in the case of telephone companies, the number of instruments used is a better test than the mileage of the telephone wires ; for the capital as well as the expenses are in far more direct proportion to the number of telephones in use than to the amount of the wire employed.

*C. Interstate double taxation of non-resident bondholders or stockholders.* The subject of taxation of corporate stock or

<sup>1</sup> People vs. American Bell Telephone Co., 117 N. Y. 242, especially 256,

bonds is complicated in another way by the question of extra-territoriality. The problem is simply this: Can a corporation, even though its capital be wholly employed within the state, be taxed on its capital or bonded debt if these are owned in part by residents of another state?

The federal Supreme Court has arrived at some very remarkable conclusions. In so far as bonds are concerned, the above practice has been pronounced unconstitutional. In one case it has been held that a state tax on bonds issued by a railroad company and secured by a mortgage on a line lying partly in another state was void, because the state was taxing to that extent "property and interests beyond her jurisdiction."<sup>1</sup> A later case went further and decided in general terms that a tax on corporate bonds is invalid as to non-resident owners because the debts are not the property of the debtor, *i.e.* the corporation, but of the creditors, *i.e.* the bondholders. They are the obligations, not the property of the debtors. But the creditors cannot be taxed on their property because they are not within the jurisdiction of the state.<sup>2</sup> The particular statute in this case was the Pennsylvania law of 1868. The state courts which had hitherto entertained a different opinion were compelled to acquiesce. And in a later case, decided in the same commonwealth, the state tax on corporate loans, *i.e.* on bonded indebtedness, was upheld only in so far as it applied to the bonds owned by residents.<sup>3</sup> This, therefore, is the accepted law of the land.

On the other hand, shares of stock are treated quite differently. It has indeed been decided that a state tax on dividends is unconstitutional as to non-residents if the corporation be required to withhold the tax from the dividends.<sup>4</sup> But a state tax on capital stock, even though the stock be held partly by non-residents, is pronounced legitimate on the ground that the tax is a tax on the corporation as a whole, and not on the indi-

<sup>1</sup> *Railroad Company vs. Jackson*, 7 Wall. 262.

<sup>2</sup> *State Tax on Foreign-held Bonds*, 15 Wall. 300.

<sup>3</sup> *Commonwealth vs. Delaware Division Canal Co.*, 123 Pa. 594.

<sup>4</sup> *Oliver vs. Washington Mills*, 11 Allen, 268.

idual shareholder.<sup>1</sup> A recent case has even decided that a state tax on the shares of stockholders which the company is required to pay irrespective of dividends, is not a tax on the shareholders but on the corporation.<sup>2</sup> This is true notwithstanding the fact that in another case a tax on dividends or interest paid by the corporation was held to be a tax on the income of the stockholder or the creditor and not on the income of the corporation.<sup>3</sup>

The present state of the law therefore is that the entire capital stock of a corporation may be taxed by any commonwealth, but that only so much of the bonds are taxable to the corporation as are owned by residents of the state. The mere statement of this proposition makes it evident how impracticable and unserviceable would be the otherwise defensible taxation of corporate property represented by its stock and bonds. The Connecticut system, which at first blush seemed to be an admirable solution of the problem in so far as transportation companies are concerned,<sup>4</sup> would thus appear to be shorn of its chief merits, if the present law of the land is sound law. The great majority of states, whose corporation bonds are owned mainly outside of the state in large financial centres like New York or Boston, would find such a tax sadly inadequate. And even in the state of New York, where the comptroller is now clamoring for a tax on corporate indebtedness, the proceeds would fall far below the actual capacity of the corporation. The decisions of the Supreme Court prevent, it is true, double taxation, but they prevent it so effectually as also to prevent just taxation.

From the economic point of view, these decisions are indefensible. If the tax on capital stock is a tax on the corporation, then the tax on mortgage bonds is equally a tax on the corporation. It is stock and bonds together that represent the corporate property. For the value of the stock is diminished by the existence of the bonds. The bondholders, viewed from

<sup>1</sup> Delaware Railroad Tax Case, 18 Wall. 208.

<sup>2</sup> New Orleans *vs.* Houston, 119 U. S. 265.

<sup>3</sup> United States *vs.* Railroad Co., 17 Wall. 332.

<sup>4</sup> POLITICAL SCIENCE QUARTERLY, V, 3 (Sept., 1890), p. 464.

the economic standpoint, are no more creditors of the corporation than are the stockholders. Both together are co-proprietors, just as mortgagor and mortgagee are in economic fact co-owners of the land. It is impossible to see any economic justification for taxing non-resident stockholders while exempting non-resident bondholders. The same rule should be applied to both classes, for their interests in the corporation's prosperity are in this respect precisely the same. The original Pennsylvania decision which was reversed by the federal Supreme Court rested on an earlier case involving much the same question, known as Maltby's Case. And with all due deference to our Supreme Court it must be stoutly maintained that to the student of political economy the original Pennsylvania decision is far sounder than that rendered by the federal tribunal. In Maltby's Case the court uses the following language:

What would the plaintiff's [a non-resident] loan be worth if it were not for the franchises conferred upon the corporation by the commonwealth [of Pennsylvania], franchises which are maintained and protected by the civil and military power of the commonwealth. . . . It is on this ground that the legislature discriminates between corporation loans and private debts as objects of taxation. . . . *The loans and stocks of a railroad company resemble each other in many respects.* Both are subscribed under the authority of a special law, and *both are so far capital* that they are employed for the same general purposes. . . . Although loans and stock are distinguishable for many purposes, yet the legislature committed no very great solecism in treating loans as taxable property within our jurisdiction. . . . Corporation loans, though in one sense mere debts, are like moneys at interest, taxable as property.<sup>1</sup>

This is perfectly sound political economy, although it is not now the law of this country. The supposed difficulties which might arise from the application of the principle, in so far as the taxation of the bondholder by the state of his residence also are concerned, will be seen to vanish when we discuss further below the question of incidence. For if, as I hope to show, it is not double taxation for the same state to tax the corporation on its loans and the bondholder on his bonds, it can certainly

<sup>1</sup> Maltby vs. Reading and Columbus Railroad Company, 52 Pa. State, 140.



not be double taxation for one state to tax the corporation and the other state the bondholder.

It is remarkable that, in several cases decided since the leading case of the state tax on foreign-held bonds, the Supreme Court has applied to the relations between the federal government and foreign states a principle entirely different from that which it invoked in the case of the commonwealths. It has been held that the national tax imposed during the civil war on the dividends, coupons and profits of transportation companies is an excise tax on the business, and that it is perfectly valid even though the dividends or interest are withheld from a foreign stockholder or bondholder.<sup>1</sup> Justice Field in a dissenting opinion showed the incongruity between these decisions and the earlier ones as applied to commonwealth laws. He said:

If the United States can do this, why may not the states do the same thing with reference to the bonds issued by corporations created under their laws? What is sound law for one sovereignty ought to be sound law for another.<sup>2</sup>

But this protest was in vain. The legal status of the problem is therefore an anomalous one. The federal government can impose a tax on the total stock and bonds, or total dividends and interest of corporations, irrespective of the question of foreign-held securities. But the separate commonwealths, which are treated like foreign countries in the case of corporate stock or dividends, can impose a tax on only so much of the bonds or interest as is owned by or due to residents. This is of course an absolutely illogical situation.

A peculiarly interesting complication arises in those commonwealths where the law of mortgage has been changed for tax purposes. One of the chief grounds of the decision in the Foreign-held Bond Case was that since the railroad lands on which the bonds and mortgages were issued lay in Pennsylvania, the non-resident bondholder had no property therein. Said Justice Field:

<sup>1</sup> *Railroad Company vs. Collector*, 100 U. S. 595, decided in 1879. *United States vs. Erie Railroad Company*, 106 U. S. 327, decided in 1882.

<sup>2</sup> 106 U. S. 335.



The property in no sense belonged to the non-resident bondholder or to the mortgagee of the company. The mortgage transferred no title ; it created only a lien upon the property. Though in form a conveyance, it was both in law and equity a mere security for the debt. The mortgagee has no estate in the land.

It would be interesting, if this were the proper place, to trace the law of mortgage through both the Roman and the English law, and to show that in both systems the mortgagee had originally both possession and property, that in a later stage he had no property in the land but retained the possession, until finally he had neither property nor possession, but simply a lien.<sup>1</sup> Be that as it may, it is true that Justice Field correctly represented the American law on the subject. That the mortgagee has no estate in the land is the Pennsylvania law.<sup>2</sup> And precisely similar cases have been decided in the same way in other commonwealths. Thus, in an Iowa case, a corporation mortgage held by a non-resident was declared non-taxable in Iowa because "the mortgagee has only a chattel interest. . . . The mortgage is personal property . . . and attaches to the person of the owner."<sup>3</sup> So also under the old constitution of California, a case of intermunicipal taxation was decided in the same way. A judgment of record in one county upon the foreclosure of a mortgage situated in that county, the owner of the judgment being the resident of another county, was held not taxable in the first county because "the thing secured by the mortgage is intangible and has no *situs* distinct and apart from the residence of the holder. It pertains to and follows the person."<sup>4</sup>

It will be seen that all these cases turn upon the point that the mortgage is personal property. But in California, Oregon and Massachusetts, as we know,<sup>5</sup> it has been expressly provided

<sup>1</sup> For the Roman law of *fiducia*, *pignus* and *hypotheca*, see Hunter, Roman Law, pp. 262-276. For the development of the English law, see Digby, An Introduction to the History of the Law of Real Property, chap. v, § 5 (2).

<sup>2</sup> Rickert *vs.* Madeira, 45 Pa. State, 463.

<sup>3</sup> Davenport *vs.* The Mississippi and Missouri Railroad Co., 12 Iowa, 539.

<sup>4</sup> People *vs.* Eastman, 25 Cal. 603. See also State of Nevada *vs.* Earl, 1 Nevada State, 397; State *vs.* Ross, 3 Zabriskie, 517.

<sup>5</sup> The General Property Tax, POLITICAL SCIENCE QUARTERLY, V, 1 (March, 1890), p. 35.

that the interest of the mortgagee should be considered, for purposes of taxation only, as realty, not as personalty. This completely changes the whole situation and entirely undermines the foundation of the decision in the Foreign-held Bond Case. If the interest of the non-resident bondholder, *i.e.* the mortgagee, is no longer personalty but real estate, it does not follow the person of the bondholder but may be taxed by the commonwealth in which the corporation is situated. The taxation of non-resident bondholders must thus be assimilated in these states to that of non-resident stockholders. The federal decision will therefore be applicable to one part, but inapplicable to another part of the United States. It may even happen that the corporate property covered by the mortgage is situated in several different states, so that part of the bonds may be subject to one law, part to another. The ensuing complications may be easily imagined. It would be far better for the Supreme Court to abandon the whole contention and to reverse its decision on purely economic grounds. In assessing a tax on capital stock or bonded debt should be entirely immaterial whether or not some of the stockholders or bondholders lived without the state. The residence of the security holder should have nothing to do with the taxation of the corporation.

D. *Interstate double taxation of receipts or income.* This phase of interstate double taxation presents far less difficulties. In regard to gross receipts the test is a very simple one, *viz.* the gross receipts from business done within the state. In the case of insurance companies this is fast becoming the general rule in this country. It is applicable, as we have seen, to all corporations except transportation companies. The reason for the exception is that a tax on business transacted wholly within the state would result in a practical exemption of the larger part of railway earnings—that derived from or in any way connected with interstate transportation. As to other corporations, however, the gross-earnings tax can be easily arranged so as to obviate double taxation.

But if the gross-earnings tax be discarded, as we have sug-

gested, and if a tax on net receipts or income be imposed, how does the matter stand then? Strictly speaking, only so much of the income as is earned within the state should be assessed. But since it is exceedingly difficult to apportion the expenses of a large corporation among all its branches in different commonwealths, it would seem preferable to adopt some approximate standard by which the net receipts could be measured. The most practicable and easily ascertained test is gross receipts. Thus the most approved method of taxing corporate income would be to assess that proportion of the total net income which the gross receipts within the state bear to the entire gross receipts. Such a system would present no difficulties, and would preclude all chance of double taxation of this kind.

We have thus far considered only the question of complications arising from foreign or interstate taxation. Of minor consequence, but still of sufficient importance to deserve mention, are the problems of intermunicipal double taxation. They are of minor consequence because, in the United States at least, we have but very few instances of municipal or county taxes on the receipts, income or loans of corporations which do any business without the limits of the local divisions. On the other hand we do find local taxes on the total property and on the capital stock of corporations which have more than a purely local significance. Of course the rules should be the same as those applied above to cases of interstate taxation. But as long as so few of the commonwealths accept these principles, it will scarcely surprise us to find that the local divisions almost completely ignore them. Thus in New York city, the home of many huge corporations of national importance, it is the common practice to assess for local purposes the entire capital stock of the corporation, irrespective of the question whether a portion of its property may not be situated, or whether its stock may not be employed or owned, outside of the confines of the city. This is manifestly a crude and inequitable practice. Its injustice could be readily removed if the plan laid down in these essays were pursued; *i.e.* if corporations were taxed for local purposes on their real estate only. Ultimately, perhaps, if the local needs became more

essing, a proportionate share of the proceeds of the commonwealth corporation taxes might be distributed among the local divisions. In this way no possible complications could arise from intermunicipal double taxation.

What can we learn from Europe on this whole subject of interstate or intermunicipal double taxation? The only countries in which such interstate complications can arise are the federal states of Germany, Austria-Hungary and Switzerland. In two of these an attempt has been made to regulate the matter.

In Switzerland the constitution of 1874 imposes on the federal legislature the obligation of preventing double taxation, without attempting, however, to analyze or point out the various forms of double taxation.<sup>1</sup> While several decisions of the Swiss courts have definitely settled some of the simpler problems of duplicate taxation, the particular questions that interest us under this fourth heading have not yet been adjudicated to any extent. Beyond the principle that corporations, like natural persons, are taxable on their income and on their property by the canton where their chief office or establishment is situated,<sup>2</sup> where their business is conducted, no successful attempt has yet been made by the federal legislature or courts to solve the more complicated problems discussed above. A few of the separate cantons, however, have recently enacted into statute the principle that only so much of the capital or income as is employed or received within the commonwealth should be taxable. Such, for instance, is now the law in Vaud, Ticino and Baselstadt.<sup>3</sup> In Bern the same principle is applied to inter-

<sup>1</sup> Art. 46: "Die Bundesgesetzgebung wird . . . gegen Doppelbesteuerung die erforderlichen Bestimmungen treffen." A translation of the Swiss constitution has been published as number 18 of the Old South Leaflets, Boston, 1890.

<sup>2</sup> Zürcher, *Kritische Darstellung der bundesrechtlichen Praxis betreffend das Verbot der Doppelbesteuerung* (Basel, 1882), pp. 88-93; Schreiber [same title], p. 259. See also, in general, Speiser, *Das Verbot der Doppelbesteuerung* (Basel, 1886).

<sup>3</sup> In Vaud, all individuals as well as private corporations or societies, "*sont soumis à l'impôt pour tout le capital mobilier affecté au service de leur activité dans le canton.*" *Loi d'impôt sur la fortune mobilière et sur la fortune immobilière, du 21 août, 1886*, chap. iii, art. 12. Printed in Schanz, *Die Steuern der Schweiz*, V, 387; cf. also, IV, 128.—In Ticino, "*le persone, le ditte commerciali, le società o gli enti morali di ogni genere, che, non avendo il loro domicilio o la loro sede nel Cantone, vi tengono*

municipal taxation.<sup>1</sup> In Uri the taxable property and profits are calculated in proportion to relative mileage.<sup>2</sup> In Neuchâtel foreign corporations are taxable only for the profits earned within the commonwealth.<sup>3</sup> In Appenzell it is simply provided that corporations should pay the income tax in the place where the business is carried on, but in such a manner as to avoid double taxation.<sup>4</sup> The very recent law of Ticino is most interesting, for the further reason that it also imposes a tax on all corporate loans, but allows the corporation to deduct the tax only from the interest on the bonds owned within the canton.<sup>5</sup> Foreign-held bonds thus escape taxation in the hands of the individual holder except by the state of the owner's residence. It will be observed that the custom in Ticino is thus the exact reverse of the practice in the United States.

In Germany the conditions are much the same. In 1870 an imperial law was enacted which forbade in express terms double taxation arising from interstate complications. This law provided that individuals should be taxed only by the state of their domicile, and that real estate should be taxable only by the state

stabilimento, succursale, agenzia, rappresentanza, o vi esercitano un' industria, oppure vi posseggono beni o rendite . . . sono tenuti al pagamento dell' imposta, in ragione della sostanza e della rendita che hanno nel Cantone." Legge sull' imposta cantonale (April 28, 1890), art. 14. In Schanz, V, 462. — In Baselstadt, "bei Gesellschaften welche neben der Niederlassung im Kanton auch eine solche ausserhalb des Kantons besitzen, tritt eine dem Umfange der auswärtigen Niederlassung entsprechende Minderung des Steuerbetrags ein." Gesetz betreffend die Besteuerung der anonymen Erwerbsgesellschaften, vom 14 Oktober, 1889, § 4. In Schanz, V, 50.

<sup>1</sup> "Bei Unternehmungen, die in verschiedenen Gemeinden ihr Gewerbe ausüben, ist die Steuer nach Verhältniss der Ausdehnung des Geschäfts an diese Gemeinden zu entrichten." Gesetz über das Steuerwesen in den Gemeinden, vom 2 Sept., 1867, § 7. In Schanz, V, 88.

<sup>2</sup> Uri, Steuergesetz vom 10 Mai, 1886, art. 13. In Schanz, V, 376.

<sup>3</sup> "Les sociétés anonymes . . . sont soumises au même impôt pour les ressources que leur procurent les affaires faites dans le pays." Loi sur l'impôt direct du 18 octobre, 1878, art. 6, § 3. In Schanz, V, 219.

<sup>4</sup> "Immerhin unter Vermeidung von Doppelbesteuerung." Vollziehungsverordnung über die Ausführung von Art. 16 der Verfassung betreffend das Steuerwesen (April 5, 1880), art. 6. In Schanz, V, 26.

<sup>5</sup> The corporations "sono tenuti al pagamento dell' imposta . . . sull' importo complessivo delle obbligazioni al portatore da loro emesse." But the law contains this further provision: "Non saranno colpiti dall' imposta i capitali [including the bonds] di cui . . . ove il contribuente dimostri che ciò costituirebbe una doppia imposta." . . . Arts. 15 and 3 § 3 of the law of 1890. In Schanz, V, 460, 462; cf. IV, 282.

of its location. The only clause affecting corporations prescribes that the occupation as well as the income from the business can be taxed only by the state where the business is carried on.<sup>1</sup> But the commission which drafted the law evaded the main question by asserting that the exact proportion of the corporate business or income taxed by any one state must depend on "the particular form of the actual conditions."<sup>2</sup> This, of course, has settled nothing, and the matter remains as before a subject for the separate states to regulate.

Several of the German commonwealths have now adjusted the difficulties in very much the same way that has been adopted or has been proposed in this country. Thus the Baden income tax law of 1884 provides that only so much of the corporate income should be assessed as is proportional to the amount of capital employed within the state.<sup>3</sup> So also the Prussian law of 1867 provides that the taxable net income of railroads which lie partly in other states should be estimated by the proportion of gross receipts within the state, and that this again should be calculated in proportion to the mileage within the state.<sup>4</sup> Finally the recent Prussian local tax law measures the proportion of corporate income or net profits due to each tax district by the share of the gross receipts in the case of banks and insurance companies, and by the share of the expenses for salaries and wages in the case of transportation companies.<sup>5</sup>

The tendency therefore seems to be the same in all countries. Whether the tax be imposed on property or on income, the law should be applicable to both domestic and foreign

<sup>1</sup> Reichsgesetz wegen Beseitigung der Doppelbesteuerung. Vom 13 Mai, 1870, 3. Reprinted in Meitzen, Die Vorschriften über die Klassen- und klassifizierte Einkommensteuer in Preussen. No. 6.

<sup>2</sup> "Dass die Entscheidung immer von der besonderen Gestaltung der thatsächlichen Verhältnisse abhängen werde." Cf. Clauss, Das Reichsgesetz wegen Beseitigung der Doppelbesteuerung. In Schanz's *Finanzarchiv*, V (1888), 138-197, esp. 19.

<sup>3</sup> Badisches Einkommensteuergesetz v. 20 Juni, 1884, art. 5, lit. B. In *Finanzarchiv*, III, 368.

<sup>4</sup> Law of March 16, 1867, § 9. For the judicial decisions and rescripts on this point, see Clauss, *op. cit.* 181.

<sup>5</sup> Communalsteuernothgesetz von 27 Juli, 1885, § 7. Printed in *Finanzarchiv*, III, 14-193, together with an explanatory article by Secretary Herrfurth.

corporations; and while no deduction should be made for non-resident holders of stock or bonds, only so much of the property or income should be assessed as is employed or received within the state. And since an exact standard is unattainable, it is advisable to use the approximate test of relative mileage in the case of transportation companies and relative gross receipts in the case of other corporations.

### XI. *Double Taxation of the Corporation and of the Holder of Stock or Bonds.*

We come finally to the fifth and most important division in the subject of duplicate taxation—the taxation of the corporation and of the shareholder or bondholder. The question is this: If we tax the corporation, shall we also tax the individual who owns the stock or bonds of the corporation? Is this double taxation? Is it unjust taxation?

Let us first discuss the actual practice both here and abroad. In the United States the legal conditions are chaotic. In some states the tax on the corporation is declared to be a tax on the shares, which are accordingly exempted from assessment. Thus in California the statute declares that “shares of stock possess no intrinsic value over and above the actual value of the property of the corporation for which they stand,” and that to tax both corporation and shareholder is double taxation.<sup>1</sup> In Arizona we find exactly similar language used.<sup>2</sup> And in a large number of other commonwealths (Alabama, Florida, Idaho, Maryland, Michigan, Montana, Nebraska, New York, North Carolina, Ohio, South Carolina, Utah, West Virginia and Wisconsin) shares of stock in the hands of individuals are exempt when the corporation itself is taxed, although the reason of the rule is not always expressly stated as in the cases just cited.<sup>3</sup>

<sup>1</sup> Cal. Code, § 3608; *cf.* *Burke vs. Badlam*, 57 Cal. 594.

<sup>2</sup> Ariz. Code, § 2633.

<sup>3</sup> Ala. Revenue Code of 1884, sec. 2, § 8; Fla. Digest, chap. 138, sec. 10; Idaho Rev. Stat. §§ 1401, 1440; *Gordon's Executors vs. Baltimore*, 5 Gill, 231; Mich. Laws of 1885, no. 153, sec. 2; Mont. act of Mar. 14, 1889, § 9; Neb. Comp. Stat., chap. 77, art. 1, sec. 7; N. Y. Rev. Stat. Pt. I., chap. xiii, tit. i., § 7; N. C. Rev. Laws,



On the other hand the weight of judicial decisions in other commonwealths (Indiana, Illinois, Iowa, Louisiana, Maine, Massachusetts, New Jersey, Pennsylvania and Tennessee) is exactly the contrary effect.<sup>1</sup> In some of these cases it has been held that "the tangible property of a corporation and the shares of stock are separate and distinct kinds of property under different ownership; the first being the property of the corporation and the last the property of the individual stockholder." Taxation of both corporation and shares of stock is hence pronounced neither duplicate nor unjust taxation, even though the shares of stock have no value save that which they derive from the corporate property and franchise.<sup>2</sup> In other cases again, it has been held that even though the taxes amount to double taxation, they are not unconstitutional. This, however, is true only in those states which like Pennsylvania admit double taxation even though it be confessedly unequal taxation.

Other commonwealths, again, take a less logical middle ground. In the case of certain corporations they do not permit taxation of both shares and corporation; in the case of other corporations they do not object to this simultaneous taxation.

In the case of national banks, as we know, the taxation of the corporation itself is made impossible by federal law. Most of the states, therefore, tax only the individual shares, although they collect the tax through the corporation.<sup>3</sup> In many cases this system has been extended also to other banks besides na-

p. 102, sec. 7; Ohio Rev. Stat., § 2746; S. C. Rev. Stat., chap. xii, sec. 6, § 19; Mich. Comp. Laws, § 2009; W. Va. Code, chap. 29, sec. 51; Wis. Rev. Stat., sec. 8, § 9.

<sup>1</sup> *Conwell vs. Connersville*, 15 Ind. 150; *Porter vs. Railroad Co.*, 76 Ill. 561; *Danahy Banking Co. vs. Parks*, 88 Ill. 170; *Cook vs. Burlington*, 59 Ia. 251; *Newmans vs. Canal Co.*, 32 La. 51; *Cumberland Marine Railroad vs. Portland*, 37 Me. 1; *Tremont Bank vs. Boston*, 1 Cushing, 142; *State vs. Thomas*, 26 N. J. 181; *Wittsell vs. Northampton County*, 49 Pa. State, 526; *Pittsburgh Railroad Co. vs. Commonwealth*, 66 Pa. State, 77; *Emsly vs. Memphis*, 6 Baxter, 553.

<sup>2</sup> So also in Switzerland this simultaneous taxation has been upheld on the strictly legal ground that the corporation and the shareholder are distinct persons. See *Reiser*, *Das Verbot der Doppelbesteuerung*, and *Roguin*, *La Règle de Droit* (Lausanne, 1889), 141 and *passim*.

<sup>3</sup> See the first article of this series, *POLITICAL SCIENCE QUARTERLY*, V, 2 (June, 1900), pp. 279-283.



tional banks. A few commonwealths (Delaware, Georgia, Kansas and North Carolina) pursue this method with regard to all corporate shares in general, and collect the tax from the corporation.<sup>1</sup> But in Iowa, Kentucky, Vermont and a few other commonwealths the prohibition of simultaneous taxation of both shareholder and corporation applies only to definite classes of corporations.<sup>2</sup> In Massachusetts, curiously enough, the corporation is taxed and the individual shareholders are exempt as regards all dues except those for school-district and parish purposes.<sup>3</sup>

The decisions of the United States Supreme Court are somewhat conflicting. The earlier cases seem to uphold simultaneous taxation of corporation and shareholder. In a late case, however, the court asserts that double taxation is never to be presumed; and that, although the commonwealths have an undoubted right to levy such taxes, in the absence of a special statutory provision the presumption is against such an imposition.<sup>4</sup>

On this point, accordingly, we find an absolute contradiction of theory. In a cognate matter there is a still greater diversity of practice. Some commonwealths, as we have just seen, tax the stockholders on the full value of their shares, irrespective of the question whether the corporation has been taxed or not. In other states, however, only a portion of the value of the shares is taxable. Thus in Louisiana, Minnesota and Nebraska, in the assessment of shares of stock to the holders, a proportionate part of the value of the real and personal corporate property taxed within the state is deducted from each share.<sup>5</sup> In New

<sup>1</sup> Del. Laws, 13, chap. 393; Ga. Code, sec. 815; Kan. Comp. Laws, chap. 107, sec. 6; N. C. Machinery Act of Mar. 11, 1889, sec. 16.

<sup>2</sup> In Iowa the prohibition applies only to manufacturing companies, Acts 18th Gen. Assembly, chap. 57, §§ 1, 2; in Kentucky to turnpike, gas, telegraph, telephone, express, street-railway and toll-bridge companies, Revenue Law of 1886, chap. 1223, art. iv, § 8; in Vermont to railroads, Rev. Laws, sec. 270.

<sup>3</sup> Mass. Pub. Stat., chap. xi, sec. 4.

<sup>4</sup> *Tennessee vs. Whitworth*, 117 U. S. 136, 137; also, *New Orleans vs. Houston*, 119 U. S. 265. For the earlier cases, see *Van Allen vs. Assessors*, 3 Wall. 573; *The Delaware Railroad Tax Case*, 18 Wall. 230; *Farrington vs. Tennessee*, 95 U. S. 686; *Sturges vs. Carter*, 114 U. S. 511.

<sup>5</sup> La. Acts of 1888, no. 85, sec. 27; Minn. Gen. Stat., chap. xi; Neb. act of Mar. 1, 1879, sec. 32.

Massachusetts and Tennessee a proportionate part of the real estate actually taxed is deducted from each share.<sup>1</sup> In Rhode Island a proportionate part of the real estate and machinery is deducted.<sup>2</sup> In Maine a proportionate part of the machinery, goods manufactured or unmanufactured, and real estate locally taxable is deducted.<sup>3</sup> Finally, in New York the statute (which applies however only to state and national banks) provides for the deduction of the assessed value of the real estate.<sup>4</sup> In all these cases only the property actually taxable within the state is deducted. But in Vermont, in the case of manufacturing companies the value of the corporate realty and personalty, and in the case of all other corporations the value of the realty, is deducted whether the property be located or taxable within or without the commonwealth.<sup>5</sup>

Such is the chaos in regard to shares of stock. The same question can of course arise in reference to the mortgage bonds. As regards the simultaneous taxation of corporate property and of the individual bondholder, the disagreement is less profound, only because corporate loans are, as we know, rarely taxed. In the one commonwealth, Connecticut, where certain corporations pay what has been pronounced a property tax on the value of their stocks and bonds, it has been held not to be double taxation to assess the individual bondholder as well as the corporation.<sup>6</sup> And yet Pennsylvania and Maryland seem to come to the diametrically opposite conclusion, in so far as the bonds in these commonwealths are taxable only to the corporation and not to the individual bondholder.<sup>7</sup> In Pennsylvania we thus find the very illogical situation that, while the corporation is

<sup>1</sup> N. H. Gen. Stat., chaps. 53-55; Tenn. Laws, 1868-69, chap. 9, sec. 9.

<sup>2</sup> R. I. Pub. Stat., chap. 43, sec. 12.

<sup>3</sup> Me. Rev. Stat., tit. i, sec. 14, § 3.

<sup>4</sup> N. Y. Laws of 1866, chap. 761; Laws of 1882, chap. 409, § 312. Cf. People v. Commissioners of Taxes, 69 N. Y. 91.

<sup>5</sup> Vt. Rev. Laws, tit. 9, chap. 22, sec. 288. Cf. on this point Moore, Corporate Taxation, in *American Law Review* for 1884, p. 771. Moore's statements are not entirely accurate.

<sup>6</sup> Bridgeport vs. Bishop, 33 Conn. 187.

<sup>7</sup> Pa. law of June 30, 1885, § 4; Md. Rev. Code, art. xi, sec. 97. Before the corporation tax law of 1880, the same principle applied to all corporations in New York.

taxable in both cases, the shareholder but not the bondholder is again taxable. Maryland escapes the difficulty by declaring neither stockholder nor bondholder liable. The federal Supreme Court virtually accepts this same principle in deciding that a tax on the bonds is a tax on the bondholder, not on the corporation.<sup>1</sup> It may be confidently asserted, therefore, that as soon as the taxation of corporate loans becomes as general as is now the taxation of corporate stock, we shall be confronted by precisely the same difficulties.

If now we turn to Europe, we shall find a still greater diversity of practice. Of the European countries, Switzerland is the only one in which some of the cantons still tax corporate property or capital stock. And in Switzerland the condition is just as chaotic as with us.<sup>2</sup> Thus one set of cantons (Grisons, Baselstadt, Aargau and Ticino) formerly taxed only the shareholder, not the corporation.<sup>3</sup> But the intercantonal complications soon assumed important proportions. It frequently occurred that the great majority of the shareholders resided in a different canton from the home of the corporation, to the manifest detriment of the public revenue in the original canton. Owing to this fact, the above system has now been abandoned by all the cantons except Glarus.<sup>4</sup> A second set of cantons tax the corporate property and income, but deduct the shares, dividends or interest in the hands of the security holders of domestic corporations from their taxable property or income. That is, they tax the corporation, but not the individual. This is the law in Schaffhausen, Bern, Vaud, Aargau and Uri,<sup>5</sup> and is the prac-

<sup>1</sup> State Tax on Foreign-held Bonds, 15 Wall. 300.

<sup>2</sup> Cf. in general, Schanz, *Die Steuern der Schweiz*, I, 90-99; and Zürcher, *Kritische Darstellung betreffend das Verbot der Doppelbesteuerung*, pp. 36-41.

<sup>3</sup> This was true in Grisons from 1871 to 1881; in Baselstadt up to 1879; in Aargau to 1885; in Ticino to 1890. See the respective laws in Schanz, *op. cit.* III, 247 (note 1); II, 40; V, 4, § 20; IV, 281.

<sup>4</sup> Gesetz über das Landessteuerwesen, vom 11 Mai, 1873, § 4; in Schanz, V, 175.

<sup>5</sup> Schaffhausen, Steuergesetz vom 29 Sept. 1879, arts. 9 and 10, in Schanz, V, 259; cf. *ibid.* II, 169; Bern, Vollziehungsordnung, vom 22 März, 1878, § 3, in Schanz, V, 83; Vaud, loi d'impôt sur la fortune mobilière du 21 août, 1862, art. 6, in Zürcher, *op. cit.* 38, cf. Schanz, IV, 158 (true only to 1886); Aargau, Grossrätliche Verordnung über den Bezug der direkten Staats- und Gemeindesteuer, vom 26 November, 1885, § 7, in Schanz, V, 15; Uri, Steuergesetz, vom 10 Mai, 1886, art. 5, in Schanz, V, 375.

tice in Baselstadt, Schwyz and Zug.<sup>1</sup> The security holders of foreign corporations are, however, not exempted from taxation, as are those of domestic corporations. Grisons, moreover, has the curious provision that while corporations are taxed directly, only the shareholders of domestic corporations are exempt. The bondholders of both domestic and foreign corporations are taxable equally with the corporation.<sup>2</sup> In some of the above cantons the security holders are exempt only from commonwealth taxes, but are liable for local burdens. This is the case in Uri, Bern and Aargau.<sup>3</sup> It is the same system, which will be observed, as in Massachusetts.

A third set of cantons do not shrink from double taxation, but tax both corporation and shareholder. Such is the law in Baselstadt and Neuchâtel.<sup>4</sup> The decisions of the Federal Council are directly contradictory on this point.<sup>5</sup> Finally, a fourth set—and this seems the growing tendency in Switzerland—seeks to divide the tax between corporation and shareholder. Thus Geneva taxes the corporation on its realty and the shareholder on his shares; but does not permit the shareholder to make a proportionate reduction for the corporate realty already taxed, as is the case in New York, New Hampshire and Tennessee. Appenzell taxes the shareholders on the market value of the shares, but the corporations only on their reserve fund.<sup>7</sup>

<sup>1</sup> For these cantons, see the judicial decisions in Zürcher, *op. cit.* 38.

<sup>2</sup> Graubünden, Steuergesetz vom 28 August, 1881, § 16; in Schanz, V, 192.

<sup>3</sup> See the respective provisions in Schanz, V, 375, art. 5; 88, § 7; 15, § 7; and 19, § 7.

<sup>4</sup> Bern, Gesetz betreffend die direkten Steuern, vom 31 Mai, 1880, §§ 1, 8; 2. Gesetz betreffend die Besteuerung der anonymen Erwerbsgesellschaften, vom 14 Oct. 1889, § 1; in Schanz, V, 41, 43, 49; Neuchâtel, Loi sur l'impôt direct du 18 oct., 1887, art. 5 and art. 6, § 3; in Schanz, V, 218, 219. Schanz, I, 95, also includes Zug in this class, but erroneously, as appears from the official decision quoted in Zürcher, *op. cit.* 38.

<sup>5</sup> See the several cases in Schreiber, Verbot der Doppelbesteuerung, pp. 199-200. He opposes double taxation. But on the other hand, see Meili, Rechtsgutachten über die Besteuerung der Aktiengesellschaften, in the *Zeitschrift für schweizerische Gesetzgebung*, V, 489. See also Zürcher, *op. cit.* p. 40.

<sup>6</sup> Genève, Loi générale sur les contributions publiques, du 9 novembre, 1887, art. 300, 324; in Schanz, V, 151, 155.

<sup>7</sup> Vollziehungsverordnung über die Ausführung von Art. 16 der Verfassung betreffend das Steuerwesen (April 5, 1880), arts. 5, 6. Schanz, V, 26.

Zürich the shareholders are taxed on their shares, the corporations on their reserve fund and on the income in excess of five per cent of the capital. The income below five per cent is not taxed because it is supposed to be hit by the tax on the shareholders. For purposes of local taxation, however, the shareholders are assessed on their shares, but the corporations only on their realty and a proportionate part of their reserve fund.<sup>1</sup> In St. Gallen the stockholder is taxed on his shares, the corporation only on its income in excess of four per cent interest on the capital.<sup>2</sup>

The recent "draft of a federal law on double taxation" sought to divide the tax between corporation and shareholder in a new way. The stockholder was to be assessed by the place of his domicile on the market value of his shares up to the amount actually paid or on the dividends up to five per cent. The corporation was to pay only on the surplus value of the capital or dividends above this figure.<sup>3</sup> Such a plan, however, is not very logical. Although this particular draft failed of adoption because of the jealousy of the individual cantons at the supposed infringement of their state rights, the principle has nevertheless been accepted by a single commonwealth — Vaud. In this canton all shares which stand above par and all bonds which pay more than four per cent interest are assessable to the individual owners at their par value. The corporations are assessed only on the surplus above the capital stock, *i.e.* the reserve and sinking funds and other sums earned during the year.<sup>4</sup> Such a clumsy method is not likely to be adopted in this country. We see that Switzerland has no settled practice at all.

<sup>1</sup> Gesetz betreffend die Vermögens- Einkommen- und Aktivbürgersteuer vom 24 April, 1870, §§ 2, 4; Anleitung betr. das bei der Selbsttaxation . . . zu beobachtende Verfahren, § 6; Gesetz betreffend das Gemeindewesen, § 137, d, e. Schanz, V, 423, 424, 431, 439; II, 435. Cf. Zürcher, *op. cit.* p. 39.

<sup>2</sup> Gesetz über die Einkommensteuer, sowie über die Besteuerung der anonymen Gesellschaften (1863), art. 5; Verordnung über Besteuerung der anonymen Gesellschaften vom 28 Jan., 1867, arts. 4, 11. Schanz, V, 309, 311.

<sup>3</sup> Bundesgesetzentwurf vom 6 März, 1885. In Schanz, I, 96.

<sup>4</sup> "Les actions et parts de sociétés qui ont leur siège en Suisse et dont le cours à la Bourse est supérieur à leur valeur nominale ou qui rapportent un intérêt supérieur au 4 per cent de cette valeur, sont comptées dans la fortune mobilière du porteur ou

In the other chief European countries neither general property nor capital stock is taxed at all. The whole system is one of income taxation. But the same questions arise as to the taxation of corporate profits and of shareholders' or bondholders' income.

In England the income tax payable on annual profits or gains according to schedule D of the income tax is paid directly by the corporation, and is deducted by it from the dividends or coupons due the security holders. These are then to that extent exempt from the income tax.<sup>1</sup> In Austria the facts are similar to those in England.<sup>2</sup>

In Italy the law requires the income tax to be paid by the corporation, but does not interfere with the adjustment of the tax between the company and the shareholders. Nothing would prevent the corporation from deducting the tax from the dividends. In fact, however, it is the custom for the corporation to charge the tax to expense account. The result for the shareholder is the same. He is not assessable on his dividends because the law expressly forbids double taxation of this kind.<sup>3</sup> As regards bondholders the companies are required to pay the tax on coupons, with a right to recoup from the bondholders.<sup>4</sup> The companies generally do not deduct anything from the coupons, but, as with the tax on dividends, simply charge it to expense account. In that case it would seem as if the stockholders were liable for the tax, since, strictly speaking

des créanciers pour leur valeur nominale seulement. . . . L'avoir net (réserves et amortissements compris) des sociétés . . . est compté dans la fortune mobilière de ces sociétés pour tout ce qui excède le capital social." *Loi d'impôt sur la fortune mobilière, etc.*, du 21 août, 1886, art. 11. Schanz, V, 387; cf. IV, 158.

<sup>1</sup> Ellis, *A Guide to the Income Tax Acts*, pp. 78-112.

<sup>2</sup> Wagner, *Direkte Steuern*, § 103, in Schönberg, *Handbuch der politischen Oekonomie*, III, 307. Wagner's discussion of double taxation is most fragmentary and inconclusive.

<sup>3</sup> "Ne saranno soltanto eccettuati [in the taxable income] i redditi che per disposizione della presente legge siano già una volta assoggettati all' imposta in essa stabilita." *Legge per l' imposta sui redditi di ricchezza mobile*, art. 8, § 2.

<sup>4</sup> " . . . Le società anonime dichiareranno non solo i redditi propri, ma anche e pagheranno direttamente l' imposta relativa anche a questi ultimi redditi, rivalendosi sui loro azionisti e creditori mediante ritenuta." *Ibid.* art. 15.

the tax paid by the corporation would have to come ultimately out of the stockholders' dividends — not out of the bondholders' interest, which is legally fixed. In actual practice, however, this distinction is not observed. The bondholders, moreover, are not assessable if the corporation has paid the tax.<sup>1</sup>

In France the *taxe sur le revenu des valeurs mobilières*, in so far as it applies to the dividends or coupons of corporate securities, may be primarily collected from the company and then deducted by it from the sums due the security holders, as in England; or the tax may be assumed directly by the companies,<sup>2</sup> as in Italy, in which case, as we have seen, the shareholder and not the bondholder suffers. This actually makes a distinction the significance of which will be pointed out in a moment.

In Germany every possible plan has been tried, without any definite or uniform conclusions being reached. The matter is further complicated by the fact that corporations like individuals must pay a business tax (*Gewerbesteuer*), somewhat akin to our Southern licenses or occupation taxes. In a large number of German states (*e.g.* Prussia, Oldenburg, Brunswick, Gotha, Schaumburg-Lippe, Waldeck and Lübeck) the corporations pay no income tax, but the shareholders and bondholders are taxed on their income.<sup>3</sup> In other states, like Saxe-Weimar, Lippe-Detmold, Bremen and Hessa, the corporations are assessed, but the shareholders and bondholders are exempt.<sup>4</sup> Even in these

<sup>1</sup> For much official information and for valuable documents on the taxation of corporations in Italy, my thanks are due to Signor Luigi Bodio of Rome and Professor Rabbeno of Bologna.

<sup>2</sup> Tanquérey, *Traité . . . de l'impôt sur le revenu des valeurs mobilières*, pp. 143-150; Vignes, *Traité des impôts en France I*, 405-409; Kauffmann, *Die Finanzen Frankreichs*, pp. 288, 291.

<sup>3</sup> *Cf.* the details in Antoni, *Die Steuersubjecte im Zusammenhalte mit der Durchführung der Allgemeinheit der Besteuerung nach den in Deutschland geltenden Staatssteuergeltzen. Finanzarchiv*, V, 916-1033, esp. 1010.

<sup>4</sup> Sachsen-Weimar, Gesetz über die allgemeine Einkommensteuer, v. 19 März, 1869 [with amendments of 1874, 1877 and 1880], §§ 48 and 4. Printed in *Finanzarchiv*, II, 932. — Lippe-Detmold, Gesetz die Klassen- und klassifizierte Einkommensteuer betreffend, v. 1868 [with amendments of 1882 and 1885], §§ 1, 7. — Bremen, Einkommensteuergesetz, v. 17 Dez., 1874, § 5. — Hessen, Gesetz, v. 1884, die Einführung der Einkommensteuer betreffend, arts. 4, 19. In *Finanzarchiv*, II, 383-434. For Hessa in particular, see Schanz, *Die direkten Steuern Hessens und deren neueste Reform. Finanzarchiv*, II, 235-529. Also Conrad's *Jahrbücher*, XII, 40.

commonwealths, however, the definitions of corporate net income do not tally exactly. In most of the remaining states, like Saxony, Baden, Bavaria, Württemberg, Mecklenburg, Anhalt and the other minor commonwealths, both corporation and security holder are taxed, — the corporation on its income from business, the individual on his income from the corporate security.<sup>1</sup> In one case (Baden) the same income is even taxed four times. That is, the corporation pays a business tax (*Gewerbesteuer*) and an income tax, while the individual shareholder or bondholder pays not only an income tax but also a tax on the interest of his capital invested in the bonds or stock (*Kapitalrentensteuer*).<sup>2</sup> In the recent draft of the bill to reform the Prussian law, this same quadruple taxation was proposed. But its absurdity was so manifest that the whole project failed. It was also proposed in Hesse, but without success. So that Baden is the only state in the world which can pride itself upon assessing the same object four times.

We see hence that in Europe there is no settled practice at all. The tendency on the whole seems to be to tax the corporation and to exempt the individual for his income from corporate investments. Is this the correct policy? Is it true that in taxing the corporation, whether on property or on income, we are taxing the individual holder of the shares or bonds?

This brings us to the pith of the question. What is the incidence of the corporation tax? Where does the burden

<sup>1</sup> Sachsen, Einkommensteuergesetz v. 1878, § 4. — Bayern, Einkommensteuergesetz v. 1881, art. 1, 15. In Seusser, Die Gesetze über die direkten Steuern im Kgr. Bayern, I, 158. — Württemberg, Gesetz v. 1872, art. 1, § 3. In Sammlung württembergischer Steuergesetze (1883). — Mecklenburg, revidiertes Contributionsedict v. 1874, §§ 13, 45. — Baden, Gesetze v. 1884, die Einführung einer allgemeinen Einkommensteuer betreffend, art. 5. In *Finanzarchiv*, 361-394. Cf. Philippsberg, Gesetze über die direkten Steuern in Baden (1888). — Anhalt, Gesetze v. 1886, Einführung einer Einkommensteuer . . . betreffend, §§ 2, 4. Cf. Schanz, Die Steuern im Herzogthum Anhalt, ihre Entwicklung und neueste Reform. *Finanzarchiv*, IV, 961-1070 esp. 1016.

<sup>2</sup> *Finanzarchiv*, II, 320. Cf. Lewald, die direkten Steuern in Baden; *Finanzarchiv*, III, 350.

<sup>3</sup> Einkommensteuergesetzentwurf von 1883.



really fall? This question has never yet received adequate attention.<sup>1</sup>

## XII. *Incidence of the Tax.*

It is generally assumed that the tax on the corporation is a tax on the shareholder or bondholder. But a distinction must be drawn between the original holder and the recent purchaser of corporate securities. From the best consideration that I have been able to give to the question, it seems that in certain cases the tax is not borne by the purchaser of new corporate securities, but that it falls entirely on the original holder of the old securities issued before the tax was imposed. Let us take the case where the corporation is taxed on its income. A corporation previously untaxed has been paying, let us suppose, five per cent dividends on its stock quoted at par. If a corporation tax of ten per cent be imposed on the dividends, the stockholder will get only four and a half per cent. As we must assume, however, that the usual rate of profits on other non-corporate investments has remained unchanged, the price of the stock *ceteris paribus* will inevitably fall to ninety. People who can get five per cent on their capital will not ordinarily consent to take four and a half per cent. While therefore the original holder of the stock will lose doubly—once in his decreased dividends, and again in the depreciation of his capital invested in the shares—the new purchaser who buys at ninety will lose nothing. He will on the contrary virtually escape taxation entirely. The amount of the tax is previously discounted in the depreciation of the security. With the lapse of time and the fluctuations in the market the original holders all disappear. Hence at any given time an income tax levied only on the corporation and not on the shareholder does not affect any one except the few original holders who bought before the imposition of the tax. It is only a question of a few decades until this class of original holders disappears entirely.

<sup>1</sup> The nearest approach to a discussion of this question is to be found in Helferich, Ueber die Einführung einer Kapitalsteuer in Baden; *Tübinger Zeitschrift für die gesammte Staatswissenschaft*, 1846, pp. 291–324, esp. 315 *et seq.*

As to bondholders, the argument is precisely the same as in the case of stockholders, if the corporation is empowered to deduct the tax from the coupons. The lower rate of interest is discounted in the depreciation of the bond, so that the new purchaser loses nothing. But in those cases where, as frequently happens, the tax is borne by the corporation and not deducted from the coupons,<sup>1</sup> the bondholder does not suffer at all, except in the very indirect sense that it somewhat lessens the ultimate security of the mortgage.

Of course this is more or less true of all new taxes under certain conditions. A new tax affects the original owner of the taxable article more than the new purchaser. In the case of direct taxes the original holder is injured while the future purchaser discounts the tax in the depreciation of the article. In the case of indirect taxes the reverse is true. For the effect of the tax is to increase the price of the article. The lucky owner who holds the article before the imposition of the tax reaps the benefit of the rise in price. But the intricate point which is usually overlooked is the question whether the new tax is a general or a partial tax. If the direct tax applies to all subjects in the class and to all classes, then the new purchaser is taxed equally with the original owner. For if the tax is general there will be no depreciation in value. It is only when the tax is a partial tax, assessing some articles in the class more than others, that the tax will virtually be capitalized and that a decrease of the value of the overtaxed article will ensue.

If we apply this principle to the corporation tax we reach the following results. If the corporation tax simply forms a part of a general scheme of income taxation, as in England or Italy, then no serious injustice is done by exempting the shareholder

<sup>1</sup> During the Civil War, when a federal tax was imposed on the coupons and dividends of certain corporations, many corporations declared these "free of tax," and refused to withhold the amount from the sums due to the bondholders and stockholders. They simply assumed the tax and charged it to expense account, asserting that while the law authorized, it did not direct them to withhold the tax. See *Internal Revenue Record*, vol. i (1865), p. 153. — The practice was thus the same as in Italy to-day.

The tax affects the interest on all investments, not simply on corporate securities. The investor, whose interest was cut down in our supposed case to four and a half per cent, will not find any non-taxable securities of equal desirability from which he can obtain five per cent. Thus the whole reasoning of the case falls away. In such a case, therefore, the tax on the corporation is a tax on the investor. To tax both corporation and individuals on their income would hence really be double taxation. But on the other hand, if the corporation tax is a partial tax, — *i.e.* if only corporate securities and not the other securities are taxed, as in France, or if only a few classes of corporations are taxed, — then the taxation of the corporation is not sufficient to reach the purchasers. The purchaser will practically escape the tax because the freedom of investing in non-taxable securities will enable him, as explained above, to discount the tax in the price he pays. To tax both corporation and shareholder in such a case is hence not unjust taxation or double taxation. To tax the corporation alone would in reality exempt the shareholder who has purchased after the tax was imposed. And with the lapse of time this class will include all shareholders.

Thus far we have been discussing the incidence of the corporation tax in a scheme of income taxation. How does the matter stand in the case of the property tax?

The principle is identically the same. Let us assume that in addition to the corporation tax a general property tax is actually levied on all individuals. In such a case the corporation would pay the tax assessed upon it, and the individual would pay upon the corporate shares and bonds. This would indeed be duplicate taxation, but only on the assumption that the corporation tax is imposed on all corporations in general, and that the property tax is actually assessed on all kinds of property. In such a case it would be unjust to tax both corporation and shareholder. This is the assumption made by most of the American commonwealths, which, as we know, generally exempt the shares when the corporate property or franchise is taxed.

But the assumption is incorrect. In the first place, only

special classes of corporations are usually taxed. Secondly, the general property tax we know to be so only in name. By far the larger part of personal property or investments in the hands of individuals escapes taxation. Under these conditions the matter is entirely different. The corporation tax will not be discounted in the lower market value of the shares, because, other things being equal, the value of new investments will vary in proportion to the net profits to be derived therefrom. Although the corporate tax reduces the dividends, yet the reduced dividends on the reduced value will, as an investment, still equal the larger dividends on a property of greater value—greater because untaxed. Although the sums are smaller, the percentage is the same. Thus where there is only a partial tax on personal property the corporation tax puts the new purchaser of shares in the same position as if he owned non-taxable property, *i.e.* it practically exempts all the shareholders except the original owners. In the case of bondholders where the corporation tax is deducted from the coupons, this is equally true. And when the corporation tax is assumed by the corporation and not deducted from the coupons,—the almost universal rule in this country,—then the bondholders are certainly not reached at all, except in the very indirect way that they may be exposed to an ultimate diminution in the security of their lien. But the tax as such does not strike them at all. Their property consisting of corporate bonds, goes scot free. A property tax or franchise tax on the corporation, under the given conditions, is not a tax on the individual holder of corporate securities.

The practical conclusion applicable to the United States to-day is as follows. It is frequently proposed that the general property tax be abandoned, and that it be replaced by a tax on real estate. This is not the place to enter into a discussion of the incidence of such a tax. But it may be declared a gross mistake to believe that such a tax will shift itself equally over the whole community, so as to produce practical equality of taxation. This Physiocratic, complacent, easy-going doctrine has been abandoned, for reasons not to be discussed here, by a few scientists and even by many practical reformers in this country.

Their plan now is to supplement the real property tax by a tax on corporations, on the assumption that it will be possible to reach in this way on the one hand the owner of realty, and on the other the owner of personalty.

But if the preceding analysis is correct, the imposition of a corporation tax together with the real-estate tax on individuals is still inadequate to realize the principles of uniformity and equality. If the personalty of individuals is exempt, then a corporation tax, however assessed, is insufficient to reach the owners of personalty. For it would at best, even in theory, reach only the owners of a limited class of personalty, *i.e.* of corporate securities. And in actual practice, as has been shown, it would not reach even these, because the tax would be discounted in the depreciation of the corporate stock or bonds. The new purchasers—that is, after a short time all the possessors—would still go virtually untaxed, together with all those individuals whose personalty consists in non-corporate investments. To continue the general property tax in its present shape is rank injustice. To abolish the personal property tax and to replace it by the corporation tax is indeed an easy method of securing revenue for the state. It constitutes an undeniable step in advance. But it is still inadequate to attain justice as among the taxpayers. The corporation tax, in other words, if it be assessed on the correct principles laid down in these essays, is a step forward in reform and deserves on that account our hearty good wishes. But it is not the ultimate solution of the problem of equitable taxation.

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## HERMANN VON HOLST.<sup>1</sup>

“**I** CAME to the United States as an emigrant, and one of the first things I did was to have my declaration of intending to become a citizen registered in the City Hall of New York. I, in fact, felt with the people of the United States before I commenced to study them and their institutions.” Such is the statement of Professor von Holst in the preface to the first volume of his constitutional history, issued in 1873. Let us consider how far his life and his work during the last seventeen years prove that he feels with and understands the people of the United States. ✓

Hermann Eduard von Holst was born June 19, 1841, under conditions calculated to lead to sympathy with a free people. He was the son of a poor German parson in Livonia. His circumstances were so narrow that his university education was obtained only with great difficulty, first at Dorpat, in his native province, later at Heidelberg, where he took his doctor's degree. In 1866 he became a tutor at St. Petersburg. The publication of a political article caused his exclusion from the Russian dominions, and having resolved to emigrate to America, he arrived in New York as a steerage passenger in 1867.

In America as in Europe he learned to feel with the people through personal privation. At last he got a foot-hold as a teacher of German and as a tutor, and in the campaign of 1868 he made political speeches which attracted attention. He was for some time engaged as an editor of the valuable but little known *Deutsch-Amerikanisches Conversations-Lexicon*. Several Bremen gentlemen about this time combined to offer inducements to some author to prepare an account of the workings of

<sup>1</sup> The Constitutional and Political History of the United States. By Dr. H. von Holst, Professor at the University of Freiburg. Translated from the German by John J. Lalor. [Vol. VI] 1856-1859. Buchanan's Election — End of the Thirty-Fifth Congress. Chicago, Callaghan and Company, 1889. — Large 8vo, 352 pp.

popular government, designed to affect the reorganization of Germany under the new North German Confederation. Von Holst, through the intermediation of von Sybel, was entrusted with the work; but he soon saw that he could not satisfy himself within the limits proposed, and the work thus begun eventually expanded into the *Constitutional History*.

Meanwhile von Holst found himself in a position highly favorable to that scientific study of the history of the United States to which he was eager to devote himself. At the founding of the University of Strasburg after the war of 1870-71, he was called as professor to the new institution. After two years of service he accepted a call to the University of Freiburg. This was then one of the feeblest of the German universities; but it grew steadily and rapidly until it surpassed Heidelberg in numbers. His first volume, published in German in 1873 and in English in 1877, made him known throughout America; and twice, at considerable intervals, urgent calls came to him from Johns Hopkins University. Both times he declined the far higher salary, and he still continues an honored and influential member of the Freiburg staff.

The spirit of von Holst's work and his qualifications for the task he has undertaken may be better understood by a brief account of his position and activity at Freiburg. He lives in an apartment in a handsome house owned by himself as an investment. Just before going to Strasburg he was married to an American lady, a graduate of Vassar College, and English is the usual family language. His domestic life is happy, and he himself avers that he is looked upon as a fanatic because he so vigorously combats the South-German custom of the men leaving their families in the evening and congregating in the *Wirthshäuser*. For many years he has suffered from chronic digestive troubles which keep him much of the time in such pain that ordinary men would feel justified in seeking a hospital. His chief recreation is to spend as much time as possible at his little estate a few miles away, which he professes to call *Ferkelschloss* — "Shote Castle."

As is usually the case in Germany, his duties as a professor



absorb the lesser part of the time. Trained as he was in the school of von Sybel, his interest has always been chiefly in modern history, and especially in its application to present problems. His favorite lecture subjects are the French Revolution, the history of Europe since 1815 and English constitutional history. He never lectures on American history, because, he says, he should have no hearers ; but in his seminary he has received a succession of American students, of whom the writer was one in the years 1882-84. As a lecturer he is much more like the French than the German professors : he excels in lucidity, in strength, in analytic power ; he introduces apt and often dramatic quotations from sources ; and his great reputation in the university and throughout Germany is heightened by his possession of a stirring eloquence.

In fact, although von Holst is a tower of strength to the university, and has recently served his term as Prorektor, his tastes incline him less toward an academic than toward a public life. He is well known as an orator, and is in request for speeches on public occasions. The request is usually without fruit, for he holds to his scientific work with great tenacity. For eight years he has served as a member of the *Herrenhaus*, the upper chamber of the Baden legislature, first by nomination of the Grand Duke, to whose son and heir he was at one time tutor, and later as representative of the University of Freiburg. In the legislature he is a faithful member and he has been much concerned in the legislation of the period. He had long been an opponent of the domestic policy of Bismarck, but he came forward in the elections of 1890 as a candidate of the National Liberal party for the Imperial Diet ; the district was hopelessly against his party, and he was defeated. It is easy to see in his public service the reason why he should prefer his position in Freiburg even to the flattering opportunities in an American university.

Neither his professorial nor his legislative duties have been allowed to interfere with what von Holst regards as his great work in life. Year by year the *Constitutional History of the United States* has moved forward till the fifth volume, the sixth

of the translation, has appeared before the public. His unusual qualifications for this great task have already been enumerated: long historical training, great experience of life, five years' residence in the United States, and participation in public affairs. To these may be added two long visits to the United States since his departure. In 1878-79 he spent a year in this country, and in 1884 he was here for several months. For materials he has been thrown chiefly on the printed sources in his own excellently chosen library, and on the large collections of the British Museum and the *Bibliothèque Nationale* in Paris. In no part of his field has he followed lines laid down in preceding works: of the later period which he treats he is the first systematic historian. His conclusions are based on the careful study of biographies and memoirs, and especially of the neglected *Congressional Globe* and other government publications. No one who has seen the unwearying patience with which he follows out the tangled threads of debate in the constitutional crises can fail to appreciate the sifting of the material in his work. He says himself that had he possessed the means to employ assistants so as to have used their results, he might perhaps have made a better work; but it would certainly have been very different from the present history, for which the material has all been assembled by one brain. Methodical as most Germans, he far surpasses many of his fellows in intensity of application. His practice is never to put pen to a sentence till it is fully framed; and he often passes an hour motionless in his chair, or walking up and down the floor, till a conclusion is reached and a statement worked out.

Measured by the number of volumes, the twenty years of study have been prolific: six volumes of history, one biography, one treatise, several monographs and sketches. The first to be published was Volume I of the *Constitutional History*, 1873 (in translation, 1877), to which von Holst gave the German title *Verfassung und Demokratie der Vereinigten Staaten*. It is not strictly speaking a history, but rather a series of connected essays on the genesis of the constitution and its development to 1829. To the next volume, published in 1878, von Holst

himself gave the title: *Verfassungsgeschichte der Vereinigten Staaten, Band I*. It is cast into a closer narrative form, and takes up the far-reaching constitutional changes of Jackson's, Van Buren's and Tyler's administrations. This volume appeared in translation, in 1879, as Volume II of the American edition of the whole work. Volume II of the *Verfassungsgeschichte* (Volume III of the translation), 1881, shows the effect of the constant increase of materials in that it covers but the four years 1846-50; and the slavery question, which receives careful monographic treatment in chapters of the first two volumes, forms the staple of this volume. The next work to appear was the *Calhoun*, in the American Statesmen Series, 1883; the slavery question is here grouped about the political life of the champion of slavery in Congress, whose singular and contradictory character has aroused the sympathetic interest of the author. In 1884 Volume III (1850-56) appeared (translated, 1885, as Volumes IV and V of the American edition); and in 1885 the *Staatsrecht* (translated<sup>1</sup> in 1887), which has been reviewed in a previous number of this journal.<sup>2</sup> In 1888 came Volume IV, Part I, of the German edition, translated in 1889 as Volume VI of the American edition. This covers the period 1856-59, and with the exception of a sketch of John Brown, which may be considered an advance sheet from the next volume, is the last important work from von Holst's pen. The forthcoming Volume IV, Part II (Volume VII of the translation), is practically ready for the press and will bring the story down to the outbreak of Secession. Here the formal work will stop for the present; but after a vacation in America the author proposes to review the whole field in a brief narrative and constitutional history, which will sum up his conclusions in a more popular form.

Volume VI of the American edition, which now lies before us, is so closely connected with the author's other writings that a criticism upon it is necessarily a criticism of his whole method. It may therefore be treated as an example rather than as an inde-

<sup>1</sup> H. von Holst, *The Constitutional Law of the United States of America*. Translated by Alfred Bishop Mason. Chicago, Callaghan and Co., 1887.

<sup>2</sup> POLITICAL SCIENCE QUARTERLY, I, 4 (December, 1886), pp. 612 *et seq.*

pendent publication. The first thing which strikes the reviewer is the size of the work. The three hundred and fifty-two pages cover but two years and a fraction, from December, 1856, to March, 1859, and include but two great events, the Dred Scott decision and the Lecompton constitution. Written upon a similar scale, a history of the Union would occupy forty volumes. The whole extent of the six volumes is upwards of thirty-one hundred pages; by a mysterious law of increasing returns, the work expands at the latter end till it is out of proportion. The number of persons who have ever read three thousand pages of grave matter on all subjects put together is limited; and the size and cost of von Holst's history are serious drawbacks to its usefulness. The author's defence is that he has omitted ten times as much as he has inserted; that he is the pioneer in a field hitherto unworked; and that his history is intended for those who will give it time and study. The justification for voluminous works must always be the belief that they will permanently affect the popular conception of the period considered; a briefer treatment might in this case produce a greater effect.

Like its predecessors, Volume VI is well furnished with footnotes. The author has declared that he is obliged to append a panoply of notes because he is breaking ground and because his conclusions are so often contrary to the ordinarily received views of United States history that, for the protection of his own reputation, he is called upon to place his authorities before the eyes of his readers. The quotations are, on the whole, briefer than in the previous volumes. For his numerous and precise references the thanks of scholars are due to Professor von Holst: he has set the example of a scientific method; he has left a guide for later scholars; he has fearlessly made public the grounds for his conclusions. Another student, examining his references, may hold that they do not always bear him out; but the author by his citations invites examination, and stands ready to meet his critics.

In this volume, as in the others, the work is not, and does not aim to be, a complete history. Those events which do not bear upon the advance of the slavery contest are left undescribed, or are simply mentioned. This lack is characteristic

of the whole history. The style is allusive. Read by itself, without a previous knowledge of political details, the volume would leave upon the mind a disjointed and incomplete effect. The narrative is compressed and uneven. The sixth volume, like the first, is rather a series of closely connected essays on constitutional topics than a consecutive history. The discussions of the Mormon question, of the debates on the Lecompton constitution, are both admirable; but the background of general political movement is wanting. The author might reply that narrative history could be written by many other hands; that he alone had undertaken the labor of a search into constitutional cause and effect. But in his anxiety to set forth clearly and distinctly the constitutional elements of the struggle over slavery he has destroyed the impression of continuity which he is most anxious to leave upon his reader. It is for this reason even more than because of the length of the work that von Holst's reputation as a writer for Americans in general must depend on his *Staatsrecht* and his *Calhoun*, and still more on his projected brief history; the constitutional history must remain a guide for the constitutional student.

Another fault of style is the complexity of construction and profusion of metaphor, which are perhaps somewhat increased in some passages by the process of translation. Take an example at random, page 133:

And if all this was already determined by the political nature of Mormonism, the same was true, in a still higher degree, of the social institution, which, partly on account of its exclusiveness—that is, its absolute irreconcilability with the ethico-moral convictions and with the fundamental principles of legal life of the rest of the people—tended more and more to become its principal pillar, although it was only a supplementary appendage to the original body of doctrine.

It is a striking fact that the author's own English style in the *Calhoun* is less involved and abstruse than that of his translator, Mr. Lalor. In common with the whole series, Volume VI is deficient in those conveniences which cost an author little labor and which double the value of his work to the reader. The first two volumes had no other guide to the text than a list

half a dozen chapters; later volumes contain an ill-arranged table of contents. No head-dates are inserted in the running readings—an omission which causes peculiar vexation in a work so far from chronological; and no volume has an index. The author promises an index to the whole at the end of the work; till that time the reader who wishes to find again some of the phrases which most attract him has no shorter way than to turn the leaves.

The characteristics thus far discussed are important, but the value of the work must be determined from deeper considerations. Volume VI has all the peculiar qualities which make von Holst's works stand out from all other histories of the United States. The volume is, even more than earlier ones, based on the debates and documents of Congress: it is in considerable part a legislative history. As a statement of facts, as evidence of the movement of public opinion, the speeches in the *Congressional Globe* are valuable: the author is perhaps too prone to look upon them as final. He has sometimes been accused of too facile an acceptance of untrustworthy authorities. Some years ago a very eminent Massachusetts statesman accused him of undue dependence on Joshua R. Giddings and John Quincy Adams. An examination of von Holst's foot-notes showed that he had cautioned his readers against Giddings, and had quoted Adams chiefly for statements of fact. With due allowance for difference of judgment or for errors in judgment, the author discriminates between his authorities and depends upon sources as none of his predecessors has done.

Whatever criticism may be made upon the details of the author's method, no one can deny the force and interest of his works. Volume VI bears throughout the mark of a strong mind, well convinced of its own conclusions. The tone of the writer is always positive and sometimes dogmatic. For this characteristic there are two reasons: von Holst feels a pardonable pride in the possession of a large body of facts hitherto almost unworked by a philosophical writer; and he sees what he does see with such clearness that he is impatient alike of the characters who misapprehend and of men of a later generation who admire them.

Yet it is this impatience with characters whom he considers unworthy that has enabled him to break down some of the best developed political myths in United States history. He has attempted little with regard to Jefferson: the task of analyzing that unequally great man has been left for Henry Adams. But the chapter in the second volume on "The Reign of Jackson" must in the end aid to destroy the unreasoning admiration of that President which has lasted down to the present day. Polk and Pierce have received a like castigation in later volumes: it is in this volume the turn of Douglas and Buchanan. The hearty, unconcealed contempt for men who have no political principle except to be on the winning side is ingrained in the author: it appears in his vigorous accusation of all "Northern men with Southern principles" and especially of Douglas. For men like Calhoun, champions of their own institutions, he has respect; for Douglas he has so little that he gives him no credit even for his undoubted lively national feeling. Like all writers of the present day, von Holst cannot picture to his mind a state of political feeling in which the majority of voters, North as well as South, shared Douglas's indifference as to whether slavery were "voted up or voted down." He seems to single Douglas out for castigation from among the whole group of politicians, but he disentangles in this volume the complications of the man's character and his lack of moral principle. He shows how inevitable was the disruption of the Democratic party, and how irresistibly yet unwillingly Douglas was compelled to abjure the Lecompton constitution and thus to give up all hold on the Southern Democrats, in order to maintain his control of the Northern Democrats.

Until the appearance of this volume the part of Buchanan in the first three years of his administration had never been clearly understood. We now see the elements which prepared the way for his abject downfall in 1860-61. He had undertaken to unite his party by yielding Kansas to the Southern wing, and he was unable to deliver the goods; he set himself against the sense of fair play of the nation, and he was overwhelmed. Here is von Holst's estimate of him:

[He was] much inclined to purchase freedom from trouble, care and danger, at a high price. But, at the same time, his vanity was great enough, notwithstanding all this, to play for the highest prize, and his self-reliance could not but grow, through his great degree of weakness, to senescent wilfulness, and this all the more the deeper he was dragged into the whirlpool of the conflict of over-powerful actual events, promoted as much by his marrowlessness as by his blind self-reliance. Weakness, self-overestimation and wilfulness—a more disastrous combination of qualities could, under existing circumstances, be scarcely imagined.

Von Holst is no hero-worshipper. He has once said that if the angel Gabriel had come down to lead the colonies through the Revolution and into a successful federation, there would have been no credit for the Americans: the wonderful thing was that mortal men with human characters and failings accomplished so great a work. It is this wholesome attitude of criticism, of taking great Americans for what they were and did, and not for what they were supposed superhumanly to have done, which has probably caused some assertions that von Holst is unfriendly to American institutions. On the contrary, in his own country he is accused of an undue appreciation of and fondness for the United States. That the habit of philosophic examination of character does not prevent admiration for great men, is shown by his clear and sympathetic account of Lincoln's attitude on the slavery question and of his debate with Douglas. He recognizes in him the prophet of the epoch, the one man who could clearly see and express the inevitableness of the division over slavery. It is a tribute to the man who is more and more recognized as one of the two greatest Americans—and not the lesser.

The volume is by no means biographical; and the central and dominant idea is, as in others of the series, the essential contradiction of free institutions and slavery—the necessity that the Union should be all free or all slave. The thought is not original with von Holst; but he has so urged it and insisted upon it, that the idea is entering text-books and infiltrating into the schools. Like all dominant ideas, it often carries him too far. However true it may be that slavery affected all other



questions, and was itself the great and insoluble question, tariffs, land-grants, homestead bills and other measures were carried through on other grounds, and they also are evidences of development. As in the other volumes, there is one chapter devoted especially to the discussion of the elements of the slavery struggle and the differences between the North and the South. The political history may be and probably will be worked over hereafter by other hands in briefer and more direct form; these chapters will remain the standard authority upon the political results of slavery. The weakening influence of slavery was seen in its fall; the causes of that weakening influence are here set forth in permanent form. The author has a strong bias: he thinks slavery wrong and sympathizes with its opponents; he exults not only in the triumphs of the champions of freedom, but also over the mistakes and errors of the friends of slavery. This bias is very distinctly traceable in his rhetorical indictment of the Dred Scott decision:

How could the opposition fail to look upon the judgment, legally as an invalid usurpation and as a perversion of the law, never to be recognized, politically as an absurd and bold assumption, and morally as an unparalleled prostitution of the judicial ermine?

It is impossible for any man to discuss the slavery question without bias: von Holst does not write judicially, but he does write in sympathy with the spirit of the American people. The fact that he is a foreigner and of foreign parents may perhaps prevent him from appreciating the difficulties through which the slavery question was worked out. In his effort to judge American statesmen as they were, he may sometimes apply to them the standard of a later age than their own. But the chief aim of the present volume is to trace the progress of that which we recognize now as the true and free spirit of America; and the book is one to make Americans more proud of a nation which has had the moral force to free itself of an immoral institution.

ALBERT BUSHNELL HART.

## REVIEWS.

*The Negro in Maryland: A Study of the Institution of Slavery.* By JEFFREY R. BRACKETT, Ph.D. (Johns Hopkins University Studies. Extra volume VI.) Baltimore, N. Murray, 1889. — 8vo, 268 pp.

*Notes on the Progress of the Colored People of Maryland since the War: A Supplement to The Negro in Maryland.* By JEFFREY R. BRACKETT, Ph.D. (Johns Hopkins University Studies. Eighth Series, VII, VIII, IX.) Baltimore, Publication Agency of the Johns Hopkins University, 1890. — 8vo, 96 pp.

*The Plantation Negro as a Freeman: Observations on his Character, Condition and Prospects in Virginia.* (Questions of the Day. No. LVII.) By PHILIP A. BRUCE. New York and London, G. P. Putnam's Sons, 1889. — 8vo, ix, 262 pp.

*The Negro Question.* By GEORGE W. CABLE. New York, Charles Scribner's Sons, 1890. — 12mo, vi, 173 pp.

In striking contrast with the greater number of books on the negro, Dr. Brackett's volumes are devoted to an examination of actual conditions within a territory small enough to be exhaustively studied; and his aim is to present clearly all the facts rather than to make deductions.

In the introduction to *The Negro in Maryland*, Dr. Brackett refers very briefly to the rise and decline of enslavement for debt or by capture in war and the custom of ransom; to the strange mixture of religion and thrift in the servitude to which the Spaniards reduced the negroes and the Indians in trading in Africa and America; and to the beginning of negro slavery in the western world. From the settlement of Maryland by Lord Baltimore in 1634 until the early part of the next century, Indians captured in war or convicted of crime were often enslaved for years or for life. And white slaves, or "servants," as the laws styled them, were then and long afterwards very numerous; their service being the result of crime or voluntary contract and generally lasting for a fixed term. In the 122 pages of the third chapter are condensed in logical order all the facts touching the origin and growth of negro slavery in Maryland; the regulations and legislation that governed it; the changing restrictions upon immigration and emigration of slaves into and out of Maryland; the slave's civil rights; the provisions of state and local law to prevent his escape by flight or servile insurrection; the criminal

code with special references to slave offenders; the history of "sale South" and of the general enforcement of the laws affecting slaves and property in them, with all cognate questions. Manumission is treated with the same thoroughness, from the first act upon this subject, in 1752, to the last in 1864. The final chapter of this interesting study is upon "The Free Negro." His lot was in many respects a harder one than the slave's. The laws covered almost every point in his daily life, and were designed to render his residence in Maryland as uncomfortable to him and as vexatious to the general public as possible. The immigration of free negroes was prohibited and their emigration harshly encouraged. Joel Chandler Harris, in *Free Joe*, vividly portrays the result of the legislation which is here detailed. Not only are all enactments of the legislature upon these subjects set out chronologically and with great fulness of detail, but the journals of the two Houses, the records of the courts and the current newspapers have been searched for evidence and illustration of the actual administration of the laws and the prevailing popular opinion.

That Dr. Brackett's work is systematic and exhaustive is a great merit; but these qualities alone do not make a "study." The materials are all here, but undigested; in order, but not vitally co-ordinated. A "study," like a true book, is a finished product ready for consumption, and not a collection of the raw materials of intellectual subsistence. Without a succinct and flowing narrative of the salient facts and lucid generalizations from them, the book cannot reach the reading public. With it the volume might be made as interesting and valuable to the general reader as it is now to the student of politics.

Happily this criticism does not apply with equal force to Dr. Brackett's *Notes*. They are delightfully simple and unpretentious, yet concrete and scholarly. To the best of my recollection this is the first, or at least the most satisfactory, effort ever made to gather and arrange the statistics of an entire state on almost every feature of the negro's daily life. Dr. Brackett wisely devotes small space to politics. The political negro can best be studied in the history of states farther south. Yet enough is given in the *Notes* to show clearly that he has been the spoil of the politician rather than a voter able to demand and command his rights. The clear statements of fact in regard to the Maryland negro's ideas and habits touching the acquisition of property, protective unions for laborers, manual and intellectual schools, newspapers, religious work, literary and benevolent associations, secret societies, social relations, professional life, jury service *etc. etc.*, show the folly of reasoning by mere theory—which is also likely to be by prejudice. Here are the records of what Maryland negroes have done or failed to do. Our author seems to be so conscientious with his facts that no honest reader

can fail to draw for himself the conclusion that, so far as Maryland is concerned at least, the heroic remedies of a flood of political power and a deluge of education are worthy only of political quacks and fanatics. Such measures are not, neither can they construct, a stable civilization. The elevation of the negro — which means merely civilizing him — is like the erection of a brick building: there must be a solid foundation, and the materials must be such and in such relations that they will adhere, — else they will soon fall into débris. Lacking these prerequisites, negro civilization in Mississippi, Louisiana and South Carolina became human débris. Dr. Brackett's *Notes*, without either argument or drawing of conclusions, shows the best way to solve the problem of civilizing the negro.

The only safe method of treating a question obscured by prejudice, passion and half-knowledge is the historical one. Mr. Bruce is evidently a native Virginian; his memory does not recall the days of slavery, and his observations refer especially to "that portion of the Old Dominion which lies between the James River and the northern boundary line of North Carolina." He discusses the important subjects of parent and child, husband and wife, master and servant, blacks and whites, the negro and the commonwealth, religion, superstition, mental and moral characteristics, the negro as a laborer and mechanic, and others of kindred nature. Being of the later generation, he plainly struggles to see and tell the truth in the light of *post-bellum* events; but born amid the ideas of a former period and never having grouped facts historically and reasoned inductively, the result is to be regretted rather than condemned.

Dr. Atticus G. Haygood — probably the bravest and most valuable friend the negro has in this generation — asserted the plain but, to many of his fellow-Southerners, the startling truth:

In its essential characteristics the human mind is the same in every race and in every age. When a negro child is taught that two and two are four he learns just what a white child learns when he is taught the same proposition. . . . There is no more in this statement to excite prejudice than if one should affirm that a negro boy ten years old weighs as much as a white boy ten years old, or that he can jump as far.

Mr. Bruce reverses this course of reasoning. He believes that because the negro race is inferior to the Caucasian, every negro is and must forever remain inferior to his white neighbor, *i.e.* that the general traits and immoralities of the negro race are the necessary possession of every negro. The spectres of social equality, political superiority and the kindred horrors all seem to haunt him. How do these delusions work themselves out? Most disastrously to the honest purposes of our author. The whole category of human failings, common the world over to po-

and semi-civilized peasants, are charged up as the characteristics of the ex-slave along with his few special or serious weaknesses. What is the conclusion? What can it be from such an outrageous but common premise? Ah, possibly education may be of some assistance in a few instances, but, alas, education seems to turn the negro's head without training his hand; liberty has loosened the restraints and given rein to immorality and idleness; freedom of labor has merely bred a license of debt or shiftlessness. Such is the gist of Mr. Bruce's philosophy. In his two hundred and sixty pages there are not twenty hopeful sentences. He seems to be entirely blind to the prosperity, resources and education of many of the negroes in such cities as Charleston, Washington and Baltimore.

Mr. Cable, although a native Southerner and an ex-Confederate, starts with the plain proposition that the negro merits the same civil rights as the white man. Having fortified his position by expelling all fear of social equality, he attempts to put political rights on the same basis. Here his argument begins to grow weak; for in his successful effort to dispel the delusion that because all negroes are not equal to Caucasians, none of them can be, he is led to believe that because some may be, all are. This is a direct departure from the teachings of the negro's history since the war. He sees nothing peculiar about the Reconstruction state governments. The main cause of their fall was "the corruption of the ballot." Can he be the one person who has never heard of eight years of legislative and administrative corruption in South Carolina—and almost as many in Mississippi and his native state of Louisiana—before the corruption of the ballot was seriously considered? He sees no difference in political science between "our fathers" and the white knaves and black thieves who looted the state and county treasuries of the states named; for he says:

For instance they [our fathers] had to learn state and national banking and general public financiering; and they learned them in a series of gigantic blunders in comparison with whose devastating results those of the Southern Reconstruction governments of 1868-77 sink into insignificance. In other words, they had to learn how to vote wisely; and no people ever learned how to vote except by voting. [p. 121.]

There is a strange mixture of sophistry, fanatical enthusiasm and sound, practical reason in this second volume which Mr. Cable has published on the negro question. The effect of these efforts has been so to enrage the South without particularly enlightening the North (except in regard to the convict-lease system), that we doubt if his very sincere and self-sacrificing discussions have really added much to the solution of the problem. For the good of the cause we cannot but regret that Mr. Cable did not devote this labor to a minute exposi-

tion of the social and political action and progress of the negro in Louisiana during all or a part of the quarter of a century of his freedom. Such a work would have no suggestion of special pleading, nor would it enrage the persons whom it is important to convince. It would have lasting value at every stage of the development of this troublesome question.

FREDERIC BANCROFT.

*The Union-State: A Letter to Our States-Rights Friend.* I  
JOHN C. HURD, LL.D. New York, D. Van Nostrand Co., 1890.  
135 pp.

Dr. Hurd's views on the constitutional law of the United States are not unfamiliar to students of American history. He has ably presented them in his *Theory of our National Existence* and other works. The occasion for the present pamphlet was a correspondence with an advocate of the right of state secession. As a central point in the discussion of this right appears the historical question as to the actual political status of the thirteen states at the time when the constitution was proposed for ratification by them. A considerable part of the volume is devoted to a presentation of facts from the records of the colonial and continental congresses, illustrating the views which prevailed at the time of the separation from the mother country. The study is interesting and valuable one.

Dr. Hurd is no believer in state sovereignty. By sovereignty he understands "the existence of *will* and *force* directed to a certain political end." The will and force which secured independence from Great Britain he conceives to have been manifested not by any single colony for its own people and territory separately, but by a number of states together and for their joint territory and population. Upon the success of the war, sovereignty vested therefore not in any single commonwealth, but in the union of all. A federal state, or as the author prefers to say, a union-state, came into existence. Dr. Hurd considers that the reciprocal action of the Continental Congress and the vote of the peoples of the various colonies anticipated the Declaration of Independence, and also

indicated a consciousness that the exercise of any independent jurisdiction within any colony or province could rest only on a single will and force manifested in the common action of thirteen pre-existing political personalities which had never possessed sovereignty before that time, either for local government or for national existence.

Starting from this historical conception of a sovereignty vested in the states united, the author can find no basis for recognizing at any time any sovereign power in any state separately. The expe

declaration in the Articles of Confederation that each state was sovereign has to him no force as against the *fact* to the contrary. And the absence of such a declaration in the Constitution of 1789 is of no significance one way or the other. Sovereignty is a conception wholly apart from the form and powers of government, and the latter alone are the subject-matter of a constitution. Such a theory obviously leaves no room for a constitutional right of secession. The union-state was established for the whole population and territory included within it. Whatever rights any one of the constituent states possessed were but incidental to membership in the union. Renunciation of such membership would be *ipso facto* the disappearance of the state. So Dr. Hurd holds that Rhode Island and North Carolina, if they had persisted in their refusal to ratify the Constitution of 1789, far from assuming the rank of independent nations, would merely have become subject territory of the union-state.

The author thus disposes of state rights and state sovereignty; but he has a very serious grievance against recent writers of a strongly nationalistic type. While he will not see the union-state separated into lesser sovereignties, no more will he see the individual states absorbed into the greater unit. The state which resulted from the revolution was federal, not national. Its essence was in the association of thirteen political corporations, not in the aggregation of the human units contained in these corporations. The author has no patience with the rather fashionable theory that sovereignty *de facto* vested in the Continental Congress by virtue of its actual exercise of governmental functions. Such a view, he thinks, confuses the sovereign with its agent. He can see no ground for the assertion that under the Confederation the several states usurped sovereignty from the people, who by peaceful revolution regained it under the Constitution of 1789. No single state ever possessed sovereignty, original or usurped, and the people of the United States as a whole never appears in history as a political fact. The Constitution of 1789, like the Articles of Confederation, was a frame of government resting for its authority upon the collective will and force—the sovereignty—of the states which united in its ratification. The question settled by the Civil War was simply one of fact, *viz.* whether the states voluntarily remaining together and composing the continuing union-state had the will and force to maintain the former dominion over all the territory and population pertaining to it.

Without discussing here the difficult points in the author's theory—points with which our history since 1861 fairly bristles—it must be remarked that Dr. Hurd's antipathy to the advocates of the national theory leads him at times into misconceptions of their views. He refuses to distinguish between political and legal sovereignty. His own

doctrine refers wholly to the former, but he occasionally administers a castigation to a supposed adversary whose arguments are concerned exclusively with the latter. He is right in seeking to limit the application of the term to a single conception, but, until the terminology of political science is much more perfect than at present, some allowance must be made. The embodiment of superior force which lies back of all political organization is no doubt the ultimate sovereign. But what shall we call that supreme legislative authority which must exist somewhere in the organization as completed? The sovereign which makes the constitution of the United States possible is, according to Dr. Hurd, such states in combination as have the will and force to maintain the union. Two states sufficiently powerful would seem to be enough under this definition. Yet, under the existing constitution, no change in the fundamental *law* of his union-state can be made save through the action of more than thirty. New York and Pennsylvania might preserve the union by force; but three-fourths of forty-four commonwealths must work together to strengthen the legal ties that bind it. Obviously there is a marked distinction between the political and the legal sovereign. Dr. Hurd seems to think that every one who speaks of a sovereign other than the political must mean the government, and hence must fall into a very silly confusion. His error is in the insufficiency of his own analysis, which fails consistently to discriminate between the power which makes any government possible and that which determines the form and authority of a particular government,—between the sovereignty *back of* the constitution and what may be called the sovereignty *in* the constitution.

With this distinction in mind Dr. Hurd would not have so much difficulty with the theory of revolution in 1787. He will hear of “revolution” only when there is a change in the political sovereign; but some at least of the nationalistic writers apply the term to a change in the legal sovereign, and such a change undoubtedly occurred. Under the Articles of Confederation an amendment of the supreme organic law of the union-state required the action of every state; under the new constitution, the action of three-fourths was made sufficient. Many other of the barriers that separate our author from the national school disappear under the solvent power of this distinction. In fact, the essential principle of his theory and theirs is the same, *viz.* the continued existence of a single political entity in the region separated from Great Britain by the Revolutionary War. He calls this entity a union-state; they call it a nation. Another might say that, before 1865, the former name was more accurate; after that date, the latter.

WM. A. DUNNING.



*The Veto Power.* Its Origin, Development and Function in the government of the United States (1789-1889). By 'EDWARD CAMPBELL MASON, A.B. [Harvard Historical Monographs. Edited by Albert Bushnell Hart, Ph.D. No. 1.] Boston, Ginn and Company, 1890. — 8vo, 232 pp.

Mr. Mason has made a valuable contribution to our constitutional history. His first chapter, entitled "Genesis of the Veto Power," is perhaps a trifle meagre when compared with the very full chapters that follow; but this deficiency must, it seems, be set down to the exigencies of space which deprived us of the contemplated chapters on the workings of the veto in the states and in modern constitutions.

The next three chapters discuss the entire series of Presidential vetoes, and the basis of classification is found in the fact that "all measures of Congress relate either to the form of the government or to the exercise of its powers." Accordingly the second chapter deals with vetoes affecting the form of government (a limited class); the third, with those affecting the distribution of powers, and the fourth, with those affecting the exercise of powers. The various subdivisions adopted cannot be noted, but they are indicated in the headings of the chapters and can be easily followed.

In the fifth chapter, entitled "Constitutional Procedure as to Vetoes," Mr. Mason, with good reason, controverts Mr. J. H. Benton's proposition that the objections assigned must be objections to the intrinsic merits of the bill. The sixth and final chapter treats of the political development of the veto power. Then follow six appendices, three of which are by the editor of the series. These add much to the value of the treatise, especially the first, which gives a chronological list of all (433) the bills vetoed from April 6, 1789 to March 4, 1889. Ten of these vetoes had been overlooked by the Senate Committee on Printing in their report of 1886. A good index concludes the book, and the proof-reading has been careful, only a few unimportant mistakes having been noticed.

Mr. Mason's treatment of the vetoes discussed is clear and to the point. His freedom from political bias is shown everywhere, especially when he has to deal with the vetoes of Jackson, Tyler, Johnson and Cleveland. His researches have been thorough and the conclusions he has drawn from them are worthy of attention; but only two can be quoted here:

The record forcibly demonstrates the wisdom and foresight of the founders of the constitution, in their expectation that the veto would be an efficient instrument in maintaining the balance of power between the executive and legislative departments.

It may be said that the veto has been used to prevent Congress from unduly extending its authority; that in almost all cases it has been used wisely; and that it has failed only in those cases in which Congress has been supported by a strong public opinion, or in which the majority of the people took no interest.

In conclusion the hope may be expressed that the "irregular intervals" at which this series is announced to appear may not turn out to mean infrequent intervals.

W. P. TRENT.

*Essays in the Constitutional History of the United States in the Formative Period, 1775-1789.* Edited by J. FRANKLIN JAMESON, Ph.D. Boston and New York, Houghton, Mifflin and Company, 1889. - xiii, 321 pp.

The essays comprised in this volume all deal with some phase of the social or political life of the United States during the epoch which the author calls the formative period (1775-1789). They seek to exhibit in various organizations the workings of that national and humanitarian spirit which is embodied in the Declaration of Independence, the Ordinance for the Government of the Northwestern Territory and the Constitution of 1789. Mr. Guggenheimer's essay on "The Development of the Executive Departments" forms the exception to this statement. It is a careful and thorough study in the history of administrative law. The author takes up the executive departments *seriatim* and by comparison shows how all follow the same law in the process of the separation of the executive from the legislative. The article is somewhat disfigured by an annoying flippancy of tone. It is based on original research, and the author has evidently convinced himself of the correctness of his statements; still, the reader would like to be acquainted with the reasons for some of them.

The first essay, by Professor Jameson, deals with the predecessors of the present federal judiciary: the tribunal for territorial disputes, the commonwealth courts appointed to try charges of piracies and felonies committed upon the high seas; and the court of appeal in cases of capture. It contains a very interesting summary of the origin, history and procedure of these courts; but it is unfortunately brought into comparison with J. C. Bancroft Davis's longer and completer essay on the same subject, contained in the centennial volume of Supreme Court reports. "The Movement toward a Second Constitutional Convention" (Professor Edward P. Smith) is merely a re-threshing of straw already threshed by Bancroft, Curtis and Fiske. Far more original are the fourth and fifth essays. The former, by Professor Wm. P. Trent, treats of the movement toward a national organization in ecclesiastical bodies. The author traces this tendency in each of the several denominations

established in the United States and indicates the reciprocal action of these national movements in political and ecclesiastical affairs.

In "The Status of the Slave," Dr. Jeffrey R. Brackett examines the legal condition of slaves, indentured servants and freedmen in each of the colonies, and shows the effect thereon of the humanitarian spirit already referred to. He examines first the police laws enacted to protect society against servile insurrections; next, the incapacity of slaves to contract; then, the adjective law of servile persons, the peculiar organization of the courts established to try offences committed by them, and their disabilities in giving testimony, — contrasting the severity of the penalties annexed to crimes and misdemeanors committed by them, with the lightness of the punishment for offences against them. He then takes up the subject of manumission and exhibits the difficulties attending it because of administrative and political obstacles. Finally, he shows how these obstacles melted away in the Eastern and Middle states under the heat of the spirit of liberty and equality, but how the Southern states were little affected thereby. This essay goes far to demolish the popular belief that these latter commonwealths were on the high road to emancipation when the invention of the cotton-gin checked them. Dr. Brackett's paper is well written, and like the others is based on a careful examination of original records. All four of these articles show how much stronger was particularism south of the Potomac than north of it.

Taken as a whole, the volume is highly creditable to its editor and furnishes plenty of ammunition for use against Gladstone's "theory of inspiration" of the constitution, — the target against which Professor Jameson has directed his guns.

ROBERT WEIL.

*History of the United States of America during the first administration of James Madison.* By HENRY ADAMS. New York, Charles Scribner's Sons, 1890. — 2 vols., 428, 488 pp.

Madison was in more senses than one the residuary legatee of Jefferson's policy. As a member of Jefferson's cabinet and the President's most trusted confidant, he had largely assisted in framing the measures intended to carry out that policy, and commercial restriction and embargo were favorite weapons with him to attain its end. In Gallatin he had the ablest member of the former administration, and until Monroe entered his cabinet, the ablest of his own; but in his other appointments he obtained gross incompetency and even active intrigue against himself. He was President and secretary of State, until Monroe was summoned to fill the latter position, and at the outbreak of the war of 1812, he was President and secretary of War and of the Navy, with

Jefferson as an adviser. Under such disadvantages was he called upon to unravel the knotty skein of foreign and domestic policies which he and his former chief had entangled.

His efforts are described by Mr. Adams in the same clear, nervous and concise manner as was applied to Jefferson's rule, and his blunders are mercilessly detailed. The advocate becomes more apparent in the author. The progress of the Jefferson-Madison — the so-called Republican — party, from the doctrines with which it entered into control of the government to a line of policy distinctly that of the Federalists, supplies the best possible defence of John Adams and the principles of 1798; and the fact that the administration of Adams need not be described, with that strong and passionate personality of his that led him to commit what his party interpreted as blunders, is of great advantage to his defender. In showing that Madison in 1812 resorted to the same instruments that John Adams used in 1798, the writer would demonstrate that Adams was right; and this object, indeed, is attained.

The insolence of Canning and the restriction policy of Perceval were rampant at the opening of Madison's administration; and it is the author's task to show how these features of British policy so acted upon America as to produce a war at the very time when they were about to be supplanted by a spirit of courtesy and concession. In arriving at this result, blunders must have been committed. The curious engagements made with the British minister, Erskine, the prompt disavowal of them by the English cabinet and the treatment of Erskine's successor, Jackson, were steps in the development of such a paradoxical situation. But it was in dealing with France, or rather with Napoleon, that the real error was committed; for Madison insisted that the blockade embargoes and restrictions imposed by that autocrat on neutral commerce were repealed, and maintained this position in the face of wholesale seizure and condemnation of American vessels wherever Napoleon could lay his hand upon them. With the facts before him the English government was right in denying that such a repeal had occurred; and at the very time when Russia and Sweden were preparing to defend neutral commerce from the lawlessness of the French Emperor, Madison found himself opposed to Russia, at war with England and apparently in close alliance with Napoleon. In tracing out the intricate paths of diplomacy which led to such a situation, Mr. Adams's methods of writing history show to advantage.

As clearly are pictured domestic concerns. The cabal against Gallatin; the introduction of Monroe into the cabinet and his military aspirations; the weakness of Congress and the unprepared condition of the country for a war; the rise of the younger statesmen, like Clay and Crawford; the inefficiency in army and navy management; the occ

pation of West Florida by an act that could hardly be defended on any ground save ambition or land hunger ; the first application of the previous question in Congress ; the fiscal policy of Gallatin ; and the Indian campaign of Harrison, with the failures on the Canadian border, — all are told with a spirit and an accuracy that leave little to be desired, and only confirm the excellent impression made by the earlier volumes.

WORTHINGTON CHAUNCEY FORD.

*Preussisches Staatsrecht.* Von CONRAD BORNHAK. Dritter Band. Freiburg i. B., J. C. B. Mohr, 1890. — 710 pp.

This volume finishes the work on the public law of Prussia begun by Dr. Bornhak in 1888. The first of the three volumes of which the work consists is devoted to constitutional law in the sense given to it by German jurists ; the other two volumes to administrative law. These are published separately under the title of *Preussisches Verwaltungsrecht*. The first two volumes have already been noticed in the POLITICAL SCIENCE QUARTERLY. It remains only to speak of the third volume which has just appeared. This consists of a detailed exposition of the particular branches of Prussian administrative law, *viz.* foreign affairs, military affairs, the administration of justice, internal affairs and the finances. Wherever the imperial legislation has modified Prussian public law or has circumscribed the competence of the Prussian legislature, the modifications are not only noticed, but are quite elaborately treated ; with the result that the book is really more ambitious in purpose than its title would indicate. It is a treatise on Prussian administrative law, and on imperial administrative law so far as that affects Prussian administrative law. Especially interesting is the *Anhang* devoted to the recent imperial socialistic legislation, in which is contained a full description, from the legal rather than from the economic point of view, of the workingmen's insurance legislation.

Another interesting chapter is that devoted to the budget. The consequence of a failure on the part of the legislature to vote the budget is discussed at great length and with much ability. The subject is one not only of theoretical but also of great practical importance, the uncertainty of the constitutional provisions relative to it having led to the great constitutional conflict of 1860–65. Dr. Bornhak, while approving the general course of the ministry on this occasion, is of the opinion that the method adopted to attain the desired end was not the right one. He thinks that the provision of the Prussian constitution which permits the executive, in case of unexpected conditions, to issue what are termed *Notverordnungen* was a sufficient authorization to it to order the necessary expenses of the government to be paid. This view in-

involves a very wide interpretation of the power granted, and is not held by Prussian jurists generally. It is, however, fully in accord with the general monarchical and conservative spirit which pervades all Dr. Bornhak's work. From the juristic point of view it would seem to be more incapable of justification than the view of Gneist. The latter considers it to be the first duty of the crown to carry on the government. It is of the opinion that if the legislature or if one house thereof refuses to vote the budget, the executive may not on that account allow the public weal to suffer, but must order the payment of all necessary expenses, trusting to obtain indemnity from the legislature in the future. Such a theory is not really juristic at all. It transcends all legal bounds. It solves the problem rather by political science than by law. In this matter Zorn and Jellinek seem to have taken the right position. They frankly acknowledge that the law cannot solve the question, but that it must be solved by political science. But whoever may be right, Dr. Bornhak's attempt at a legal solution is both ingenious and interesting and is not incapable of justification.

The book is provided with a full index of the entire three volumes. It completes without a doubt one of the most important works on Prussian public law which have recently appeared, and maintains the same high standard of excellence which is characteristic of all Dr. Bornhak's writings.

F. J. G.

*Commentaries on the Law of Municipal Corporations.* By JOSEPH F. DILLON, LL.D. Fourth edition, thoroughly revised and enlarged. Boston, Little, Brown & Company, 1890. — 8vo, clxxiv, vi, 1516 pp. bound in 2 vols.

From its first appearance, eighteen years ago, Judge Dillon's work has taken a foremost place in American legal literature; and in the particular branch of which it treats, it has occupied the field without rival. Considering the growing importance and the intricate nature of the subject, the fact that no other special American treatise on municipal corporations has come into existence is itself strong evidence of the thoroughness with which the author has performed his task. Although but nine years have passed since the publication of the third edition, yet so rapid, almost portentous, has been the development of municipal life, so numerous are the recent statutes, reported decisions and constitutional enactments relating to cities, so deep and widespread is the interest aroused in every phase of municipal history and administration that an entire revision has for some time been needed. And I feel sure that neither the lawyer nor the general student will be disappointed in the present edition. It is a revision in the best sense of the word.

Every chapter — nearly every paragraph — shows abundant evidence of conscientious pruning or elaboration by the author's own hand. By these alterations the bulk of the text has been expanded from 1080 to 1338 pages ; while, in addition, the index has been more than doubled, and the useful table of cases cited has been extended by fifty-three pages in double column. The improvements are perhaps most noticeable in the chapters on Contracts, Eminent Domain, Streets, and Municipal Taxation and Local Assessments. Here the author's characteristics are well represented : clearness of style, judgment in the selection of cases for special discussion, careful definition supported by forcible description, and wealth of citation and illustration in the marginal notes.

The student of historical and political science, it must be confessed with regret, has learned to expect little aid in his department from law-writers, though there are, of course, honorable exceptions to the rule. Too often the credulous or uncritical statements of Blackstone and similar commentators are repeated, while the researches of modern scholars into the genesis and development of legal institutions are almost wholly ignored. It is therefore very gratifying to be able to commend Judge Dillon's book in this regard. Nowhere does the present edition show a more marked improvement over the preceding than in the discussion of questions relating to municipal administration. The author's sound views as to the defects in our municipal organization and as to the character of the reforms needed can scarcely fail to exert a good influence through the bar upon American legislation. Thus he enforces the lesson which we may learn from a study of the municipal institutions of Prussia, whose scheme of organization gives to the municipality very general powers, with the limitation on the exercise of many of them, that they shall be approved by some superior administrative officer of the central government. [But] this administrative control over the acts of the municipality does not in practice seem to be carried to so great an extent as the control actually, although irregularly, exercised by the state legislatures over our American municipalities ; so that . . . the Prussian cities in fact enjoy, it is said, a greater degree of freedom from central interposition than with us [page 14].

Again, the danger that results from vesting

unrestrained power in the central legislative authority to bestow valuable franchises affecting cities and property therein, without the consent of the municipal authorities and of the property owners,

is pointed out ; and the recklessness with which such franchises are squandered upon private companies by American cities is denounced.

Administered on business principles, a city ought to derive large revenues from the use of wharves, from railways occupying streets with their tracks, from gas, water and other companies to which are given the right to lay mains in the streets and public places [page 30].

Further on, he emphasizes the significant fact that

in many of the more important aspects, a modern American city is not much a miniature state as it is a business corporation, — its business being wisely to administer the local affairs and economically to expend the revenues of the incorporated community [page 34].

And he endorses the view that "more power and more responsibility should be vested in the mayor or executive head (page 31).

What is especially noteworthy in this connection is the author's familiarity with the lay literature of his subject. The best and most recent writers are usually cited. The marginal notes are rich material which will be of value to the non-professional reader. The historical sketch is in the main good though too general, and it contains one or two sections which should have been subjected to thorough revision. Thus the account of the civic communities established by Rome (pages 4, 5) is inadequate. The authoritative literature is not mentioned, and some of the statements are misleading. Similar objections may be made to the passage (pages 15-16) on the English towns at the time of the conquest. The author would have done well here had he accepted the guidance of Bishop Stubbs, with whose writings he shows elsewhere that he is acquainted. But to lay too much stress on possible shortcomings such as these would be ungrateful as well as unfair, for the author has warned us that he is writing "strictly for the practising lawyer," and does not purpose giving "a detailed account of the origin and rise of cities and towns." Judge Dillon's treatise is a credit to American scholarship, and must remain indispensable to every student of municipal institutions.

GEORGE E. HOWARD.

*De l'Exécution des Jugements Étrangers dans les Divers Pays.*  
Par CHARLES CONSTANT. Paris, G. Pedone-Lauriel, 1890. — 207 pages.

This is a second and very much enlarged edition of a small work published in 1883, which was so well received that it was soon out of print. The present edition forms the twenty-ninth number of Pedone-Lauriel's *Bibliothèque Internationale et Diplomatique*, and constitutes an excellent manual on the execution of foreign judgments in various countries. A larger space is naturally given to the law on that subject in France than to the law of any other country, but a general and instructive statement is afforded of the rules that obtain in the United States, England, Germany, Austria-Hungary, Belgium, Brazil, Bulgaria, Chili, Denmark, Egypt, Spain, Greece, Hayti, Italy, Luxemburg, Mexico, Monaco, the Netherlands, Peru, Portugal, Roumania, Russia, Servia, Sweden and Norway, Switzerland and Turkey. From this list it is apparent that the work of M. Constant is much more comprehensive in respect to



subject of which it treats than the chapters on the execution of foreign judgments found in the books on the conflict of laws.

It is scarcely necessary to say that when we speak of the execution of foreign judgments, we mean judgments in civil and not in criminal cases. It is a universal principle that the authorities of one country will not enforce the criminal sentences pronounced by the tribunals of other countries; but when we enter the domain of civil rights and remedies, we discover a totally different rule. Here national boundaries are in great measure obliterated. National policies and national jealousies disappear, and each nation lends its aid to administer justice as between man and man in respect to their private transactions. If, for example, a suit be brought upon a contract which was made and was to be executed with reference to a foreign law, the court will apply and enforce that law as the law to govern the case. It was somewhat broadly declared by Lord Stowell in the famous case of *Dalrymple vs. Dalrymple*, which involved the question of the validity of a Scotch marriage, that where a foreign contract was to be construed and enforced it was the duty of the court to ascertain what the foreign law applicable to it was, and that the law of England, having furnished this principle, altogether withdrew, while the foreign law then became the law of England for the purposes of the case.

This principle of the recognition by each country of the laws of other countries in civil matters really lies at the foundation of the enforcement by the authorities of one country of the civil judgments of the tribunals of another. Hence it has been declared in England that a foreign judgment in respect to a matter properly governed by the law of England would not be enforced in that country, if the foreign tribunal refused to apply the English law. On the other hand, the English law having been applied, it has been held that the English courts would enforce the judgment, although the foreign tribunal misconstrued the law. Such was the decision of Mr. Justice Sterling, in 1887, in the case *In re Trufort*. The same rule had already been laid down in two earlier English decisions, namely *Castrique vs. Imrie*, L. R. 4 H. L. 414, and *Godard vs. Gray*, L. R. 6 Q. B. 139.

It would far exceed the space allotted to a book review to attempt to disclose the rules observed and the methods pursued in various countries in the execution of foreign judgments. In some instances the subject is regulated by treaty. M. Constant informs us that France has such treaties with Austria, Germany, Italy, Russia and Switzerland. These conventions, however, are not so important for us as the broad doctrines which are generally recognized and administered. It is generally stated that, to render a foreign judgment effective, it must appear that the court had jurisdiction of the parties and the subject-matter. This is fundamental. A judgment rendered without jurisdiction is in strict right no

judgment at all, and it is obvious that the jurisdiction must extend both to the parties and the subject-matter. The judgment must also be final, and, if *in personam* and for a pecuniary claim, must be for a fixed sum. In many countries, as in Germany, Austria-Hungary, Chili and others, it may also be necessary to show that reciprocity is observed in the country from which the judgment comes. This is expressly provided in article 661 of the German code of civil procedure, which was promulgated in 1877; and where there is no express provision on the subject it would not be strange if the courts should refuse to recognize judgments proceeding from countries whose tribunals refuse to execute foreign judgments. Such a case would fall within the principle of the declaration or suggestion of Lord Hatherley, above mentioned, that the English courts would not enforce a judgment respecting a matter governed by English law, if the foreign tribunal refused to apply that law.

Growing out of the requirement that, where a foreign judgment is to be enforced, the court which renders judgment must have jurisdiction over the parties, the question frequently arises whether the defendant has properly been served with process. It is a general principle in such a case that, except as to citizens or domiciled persons, the process of the courts can have no extra-territorial effect; and it has been held both in the United States and in England that the extra-territorial acceptance of service otherwise invalid is insufficient. It would be manifestly unjust and inadmissible that persons against whom demands are made should be required to answer wherever it may suit the convenience or caprice of the plaintiff to bring his action. Such a rule would be intolerable. So sound and necessary is the requirement of service within the jurisdiction, that it has been enforced as between the states of the United States almost as strictly as between nations wholly foreign to each other. The abuses to which a relaxation of the rule would give rise have been amply illustrated in the matter of divorce. The theory on which extra-territorial service in such cases has been sustained is that it would defeat the object of the statutes to permit a person to escape their operation by leaving the jurisdiction. On the other hand it may well be asked whether, by recognizing such service, as by a notice in some obscure newspaper or by a communication mailed to a supposed post-office address, the statutes have not often been converted into instruments of fraud, by being made to serve the purposes of dishonest action on one side or of collusion. It has been strongly advocated by high authorities that foreign divorces, where the service of process is by publication, should always be treated as having no extra-territorial effect as to a defendant domiciled in another jurisdiction, unless there be satisfactory proof that the whereabouts of such defendant could not after diligent search be discovered.

JOHN BASSETT MOORE.

*History of the New York Property Tax.* An introduction to the history of state and local finance in New York. By JOHN CHRISTOPHER SCHWAB, Ph.D. Publications of the American Economic Association, Vol. V, No. 5, 1890.—8vo, 108 pp.

The history of American local finance has been almost an untrodden field. Although several students are now engaged in working up various parts of the subject, almost nothing has been published. It is therefore with a friendly recognition that we must greet this attempt to trace the history of the property tax in New York.

The monograph, which is a slightly enlarged translation of an essay originally printed in German, is written on the whole with fidelity and care. Extended references are given in the foot-notes to the chief published and manuscript material. Very little attempt, however, is made to present anything but a consecutive narrative of the facts. In the few cases where Dr. Schwab tries his hand at analysis, the result is not always good. Thus one of the main points of the monograph is that the property tax in New York owes its origin to English and not to Dutch precedents. In order to prove this statement the author gives us a slight account of the English tenths and fifteenths, which he correctly assumes to have been general property taxes. But Dr. Schwab errs in believing that this general property tax was peculiar to England. It was found all over the continent, in Holland as well as in the other countries. In Holland during the middle ages it was known as the *schot*, or tax on the *bezittingen*, levied at irregular intervals. Especially from 1653 on it became a regular state tax levied on all property in general. And it is to be noticed that when the Dutch governor gave his reasons for imposing a general property tax "on estates and means" in 1674, he added the words, "as is practised in the Fatherland in such and similar circumstances." Dr. Schwab quotes the text of this document on page 39, but significantly omits this passage, which is perhaps the most important part of the letter. It is true, indeed, that the New Netherlanders liked to impose excise taxes, after the fashion of their mother country. But the English colonies were not backward in this respect. Massachusetts imposed a license tax in 1646, and a general excise in 1668; Plymouth colony imposed an "excise" on wines and tobacco in 1646; Rhode Island in 1655; Pennsylvania in 1684, *etc. etc.* Thus the whole contention of Dr. Schwab that the origin of the New York property tax must be sought in England seems very much exaggerated. The general property tax was not an exclusive possession of England by any means. The efforts made to introduce it under the Dutch régime should not be referred to English precedents alone. The reason of the general property tax is to be found in the general economic and social

conditions; and this in fact is intimated by the author himself in another place.

The monograph is open to another criticism in its treatment of the property tax on corporations. The laws of 1823 and 1829 are given correctly, but no mention is made of the successive changes, some of them of considerable significance. In particular, the important subject of bank taxation is wholly omitted. Again, the provisions of the general corporation tax law on page 90 are by no means exact, and we find, moreover, no mention of the separate taxes on transportation companies. With these exceptions, however, the essay is a good piece of work. And it is to be hoped that we shall soon see similar monographs devoted to the other American commonwealths.

E. R. A. S.

*Freiland. Ein Sociales Zukunftsbild. Von THEODOR HERTZKA. Leipzig, Verlag von Duncker & Humblot, 1890. — xxxiv, 677 pp.*

It has seemed to me a mistake on the part of the author of this romance that he has put his book into the form of a novel, for he has lost the novelist's gift. His purpose, as distinctly announced, was to present his ideas in a realistic, striking way, so that they would reach a wider circle of readers and would have a deeper influence. If he had presented his views on the social question compactly and in scientific form, the greater part of his readers would have been better pleased, and the book would probably have had a wider influence; for this novel is as dissipated as long, dry and unpleasantly scientific to the unscientific novel reader, as is a work on political economy; while to the economist the love story—an improbable, not to say silly one—and the multitudinous details regarding the settlement and growth of Freiland are almost equally burdensome.

One cannot avoid the comparison of this work with Bellamy's *Looking Backward*. As a novel it is immeasurably inferior. Bellamy presented pleasing pictures, with details that were pleasing, but in the main he burdened his readers with statistical details and long dissertations. Besides that, the spirit of charity and brotherly love, so pleasing in an ideal world, so hard sometimes to find in our real one, breathed throughout the book. In *Freiland* the spirit is the passionless, scientific one, which is out of place in a romance, however valuable and necessary it may be elsewhere. A novel should conform to the principles of literary art; but these would exclude the rather precise pages of population statistics. *Freiland's* absurd love story, too, utterly fails to remove the impression that the author has a piece of hard work on hand,—an impression that is not favorable for arousing one's enthusiasm for the good time coming.

But the author of *Freiland* would not wish to be judged as a novelist. He is primarily an economist, and this work is intended to be an economic work. He thinks that he has discovered the solution of the social problem, and in this book he makes his discovery known. He had thought long over this problem; he had wondered at the absurdities of many of the answers given by great thinkers from Plato's time to our own; when "suddenly, like a dazzling sunbeam into the darkness of his doubt," the consciousness came that his solution was not in conflict with the discoveries and the work of others, but that it was rather the key to them all and was the only true and complete solution. I confess that the manner in which the author first places himself in the same rank with Plato and Bacon — calling the latter by name — and then coolly acknowledges that he is greater than any preceding social philosopher, has a tendency to prejudice the reader against him; but that should not hinder a judgment on the merits of the case.

Perhaps the fewest words in which the solution of the problem can be given are these: the abolition of interest on capital, of private property in land and natural forces, and of the profits of the entrepreneur as such. Or rather, as the author would say: since the use of the land is free and capital is furnished free of interest by the state, and since each person may at his will engage in whatever business suits him and go at will from one to the other, rent, interest and profits of the entrepreneur disappear, without being forbidden by the state; or, as he puts it again, they unite with wages into a single indivisible income of labor. Free association in business is encouraged to the fullest extent, in order that all the benefits of organization on a great scale may be obtained; and to each association capital is furnished by the state for productive purposes, without interest, though the capital must be repaid, and though taxes are paid for state purposes, as well as to get capital for loaning. Of course, no capital is loaned without good security for the repayment of the principal. It is not given to every one who asks for it.

A detailed criticism of the various points made in the book is not necessary, though they admit of much discussion. On economic questions we expect good work from the author. One fundamental error seems to belong to the book, — the one found in nearly or quite all books written with the same object in view. The author seems to assume too great foresight and intelligence on the part of the citizens, and he seems to overlook in great measure the means by which men are really managed by their leaders. In fact, he acknowledges in one place that it is hardly fair to start a society consisting exclusively of educated people; but he thinks that all would soon be educated in a society

that of Freiland. Unfortunately a knowledge of reading and writing, even of many other arts, will not give a man common sense or take away the ambitious desire to overmatch, even by unfair means, their fellows. There is to be no master of labor, no entrepreneur who can dash with low wages his workmen. Instead there will be a labor organizer and director, chosen by the members of the association for his fitness, subject to removal by them and having his reward fixed by them. It is difficult to believe that men would know their interests well enough to put the best man into the most important place. Nor can competition of the ablest bring about this result. In real society there is always a dearth of men of prime executive ability, but never a lack of those who are willing to use every art, fair and otherwise, to force themselves into positions of honor, profit and responsibility. Many co-operative establishments are even now, under the present system of society, meeting with success; the failure of others is due as much to the character of the men undertaking them as to the unfavorable form of our present society. The solution of our present social troubles involves a change in the characters of the wealth producers, and I do not see that this is provided for in *Freiland*, though the author thinks that he has appealed to the every-day motives that influence human conduct, and on which are built our present form of economic society.

The author's discussions are many of them very suggestive. For instance, the one regarding the advantages of publicity in all business calls attention to what seems to be a tendency of the day, as the sphere of the state's control is widening. It is probable that more publicity regarding business might be a sufficient check to some of the greater combinations in business, trusts *etc.*, if such publicity could fairly be secured. Certainly much has been done in controlling railways simply by this means.

As a whole, however, when one considers the author's purpose and the range of influence that he ascribes to his ideas, the book must be judged deficient. As a novel it is not a success, and, in my judgment, the reforming schemes are founded on untenable assumptions regarding human nature.

JEREMIAH W. JENKS.

*Der Moderne Socialismus in den Vereinigten Staaten von Amerika.* Von A. SARTORIUS FREIHERRN VON WALTERSHAUSEN. Berlin. Hermann Bahr, 1890.

Even the special student of economic and social questions in the United States will be grateful to Sartorius von Waltershausen for his conscientious and painstaking study. The book has excellences that other single volume supplies. A large correspondence with the Ger-

mans in America who have been at the front in the socialistic agitation — men like Mr. Sorge of Hoboken — furnishes material of first-rate importance. No one has so exhaustively exploited the socialistic press as the author. No one has shown with such thoroughness the political affiliations of the movement, or brought out in sharper outline both the strength and the weakness of the distinctively foreign element. In point of accuracy the book fulfils what we have long been taught to expect from all serious German studies. We are a little startled to hear Wendell Phillips called a famous *politician*, but upon the whole the reader wonders how the author could attain such skill of touch and handling where a foreigner so easily goes astray.

The first excellence of the book is the severely objective spirit in which it is written. It is happily free from both praise and censure of an emotional type. The author is wholly true to Spinoza's superb text: "In order to investigate political matters with the same intellectual freedom as the problems of mathematics, I have taken pains neither to ridicule human actions, nor to bewail nor abhor them, but to *understand* them." This is the spirit of science. Only such a spirit can keep us in close relation to *all* the facts.

The first three chapters are historical, bringing us to the formation of the Socialistic Labor Party in 1874. Though there is little new here, no one has shown so clearly the conflict between the ideas brought by German refugees and "advanced ideas" that were of American growth. The Germans were pleased to call themselves "idealists," and were naturally bitter against the practical realism of the Yankee. The Germans fret at these obstacles precisely as continental socialists always have done in their relations with the stolid matter-of-fact English unionist. Groups and "parties" are formed in this history again and again upon "general principles" or under the touch of a new enthusiasm, only to be scattered by the first sharp contact with any experience which brought to the surface the real motives and aims of the members. There are few in any agitation who see to the end what they want. Some of the German leaders like Dr. Douai and Sorge, who really knew their Marx, realized that the end meant the destruction of private interest and rent and the establishment of the International. Either of these ideas, if pressed strongly enough to the front, frightened both the timid and the prudent. The "national" idea is always in conflict with the international and dissolves many a coalition. Politics too raises havoc in proportion to the size and strength of the association. If Schaeffle could have studied his problem of the socialistic ideal in contact with an extreme democratic society, he would have stated his conclusions in the *Aussichtslosigkeit der Social-Demokratie* even more strongly than he has. Whatever a very distant future may have in store for socialism of the

German type, it is impossible to see anything but a very dismal failure of its ideal in this American history. There is almost no relation between things popularly called "socialistic" (like state management of telegraphs and railroads) and the final purpose of German socialism. The clear advantage of the present "nationalist" agitation will be to show finally to the public what the real end of socialism is. When the American workman understands that he is to have neither rents nor interest on his savings, he will see that the problem is quite different from exciting debates about municipal control of gas and street railways. No book has better brought out these issues through the simple telling of the history than the work under review.

There is in the second chapter some excellent criticism upon the philosophical basis of socialism. No one has yet adequately shown the hopeless weakness of Marx's philosophy, *as philosophy*. He accepted as a sort of finality the crude materialism that was in vogue before 1854, after which date almost every first-rate scientific mind in Germany came to see and to acknowledge that this type of materialism failed wholly to meet the facts. Marx never got beyond his earlier training, but continued to the end to express his thought in forms of this naïve materialism. No one would claim now that even strictly economic concepts could be cribbed in such formulas. This seems the more strange in Marx because of his insistence upon the relativity of our knowledge. It would seem natural that he should allow in his own system for an elasticity and a flexibility which the principle of relativity implied. In all his thinking, however, Marx was an absolutist and "wrote his qualities upon every page." It is difficult to avoid a critical word about the title of the volume under review. Though the author with some caution qualifies his use of terms, it is the general question of labor agitation in the United States with which he deals, far more than with socialism proper. There is an entire chapter upon the strikes of the summer of 1877; a chapter on anarchy, with a detailed account of the Chicago tragedy; and an account of the George movement and of the eight-hour agitation, as well as of trade unions, Knights of Labor and trusts. It is true that these things are considered in their relation to socialism proper, and yet often so independently and to such length that we quite forget the subject of the

JOHN GRAHAM BROOKS.

*The Economic Basis of Protection.* By SIMON N. PATTEN, Ph.D.  
Philadelphia, J. B. Lippincott Co., 1890. — 144 pp.

Professor Patten has endeavored in this book to present a new treatment of an old subject. That protectionists need a new statement of their doctrines to meet the difficulties of the situation into which



political controversy has forced them, cannot be doubted. Friedrich List's great work, *National Economy*, is no longer in harmony with the trend of protective legislation; and although practical men profess to disregard theories, practical legislation in any line cannot long sustain itself unless it rest on some comprehensive theory of society or of government. To supply this need, and to provide a basis in theory for the latest phase of the protective policy, was, as I understand it, the purpose of Professor Patten in writing *The Economic Basis of Protection*.

But in what particulars, it may be asked, does the latest phase of protectionist thought differ from that of the classic writers? It will be adequate to mention two characteristic points of difference. With the old writers, freedom in exchanges was the ultimate end to be attained by every nation. Protection with them was but a phase or stage of industrial development, its immediate purpose being the industrial education of the people. The new leaders, on the contrary, urge protection as a permanent policy, and argue that it should not be abandoned even though the industrial skill of a nation comes to be greater than that of other nations. Indeed Professor Patten carries this so far as to claim that the loss entailed by trade between peoples of unequal industrial development is greatest for that people whose labor is the most efficient. Again, in the old scheme of protection it was thought to be illogical to obstruct free importation of raw material. "We have," says Friedrich List, "previously explained that free trade in agricultural products and raw material is useful to all nations at all stages of their industrial development." The arguments leading to this sentence strike the keynote of the old system of protection, but they are entirely ignored by the modern writers and wholly disregarded by current legislation. It may be doubted if Henry Clay would have accepted a nomination for the Presidency on a platform that endorsed such a tariff bill as the McKinley Bill.

If the above be a correct presentation of the situation, we are naturally led to inquire in reviewing Professor Patten's book, what new theory of social development is set forth to serve as the basis for this newest phase of the protective policy. No such theory is definitely stated (an omission which I regard as a serious error), but it is not difficult to discover certain phrases which our author believes to carry with them an adequate social theory. Society, he claims, should be kept in a condition of dynamic progress. This is the hook on which his entire argument hangs. He continuously brings into contrast the *dynamic* and the *static* theory of society, claiming that protection is in harmony with the former and free trade with the latter theory. "Our ideal," he says, "must stand in sharp contrast with the statical ideal advocated by most free traders."

These words, "dynamic" and "static," were of course borrowed from current discussions on sociology, and in making use of them Professor Patten shows that he regards society as an organism whose development must proceed according to certain laws; and further, in professing himself an advocate of "dynamic progress," he asserts, by inference, that society, being an organism of the highest type, is capable of directing the course of its own development. From this it follows that social progress may be dynamic, that is to say, it may be directed by a conscious purpose which finds expression in law. In this manner there is discovered a logical basis for the claim of protectionists, since it is at least logical to assert that protective laws may be made an instrument whereby a government can direct industrial development into certain chosen channels.

It will be observed that this theory of society is very different from that which lies at the basis of English economy; and, in assuming it, Professor Patten successfully evades the ordinary criticisms of those writers who adhere to Manchester doctrines. This must be appreciated before his book can be understood. For myself, I am quite willing to admit that the standpoint of his treatise is in harmony with the permanent trend of economic thought. I cannot, however, regard it as a satisfactory treatise; for it does not seem to me to follow out in a clear and simple manner the line of reasoning imposed by the premises assumed. It is an open question whether or not the acceptance of the dynamic theory of society necessitates the acceptance of the policy of industrial protection. This is, however, asserted by our author without argument, and he most unfairly places the alternative before his readers of believing in protection or of confessing themselves adherents of social stagnation. By implication he denies that one who professes to believe in the theory of dynamic progress can advocate freedom in matters of trade. His treatise, instead of adding to our knowledge of the science of sociology by a discriminating application of its principles to the doctrine of protection, seeks merely to dignify the doctrine of protection by expressing its stock arguments in phrases borrowed from sociology. It does not seem to me that Professor Patten appreciates the broad and deep significance of the phrases he has borrowed.

If this book be regarded from the standpoint of the minor argument it contains, there is much to be commended. Whatever Professor Patten writes is suggestive. His presentation of the changes that have taken place in economic doctrine during the last one hundred years, and the relation of those changes to the theory of protection, is most instructive. His argument to show that protection is opposed to monopolies is ingenious in the extreme. The exception which he files to the theory of comparative cost in its application to international trade

has considerable force. And his appreciation of the fact that the first step in social progress is the development of human wants, is admirable. But the minor arguments contained in a book cannot rescue it from criticism. A book that is well written must be properly adjusted to the scheme of thought to which it professedly allies itself, and the premises it assumes must be logically carried out. When the great book on the protective policy shall have been written, it will be found to fit into a general theory of dynamic sociology. Professor Patten's book does not so fit. The place left vacant, now that modern protectionists have repudiated Friedrich List, is still vacant.

HENRY C. ADAMS.

*Die Steuern der Schweiz in ihrer Entwicklung seit Beginn des 19. Jahrhunderts.* Von GEORG SCHANZ. Stuttgart, J. G. Cotta Nachfolger, 1890. — 5 vols., large 8vo, 384, 487, 383, 289, 489 pp.

Among all the European countries Switzerland is the only one where the general property tax is still to be found. It is the one state above all others whose methods of taxation bear a close resemblance to those of the United States. It would be only fair to expect, therefore, that a work of such prodigious proportions as that of Professor Schanz on Swiss taxes should be of the utmost importance to all Americans. And the expectation is not disappointed. But rarely before in the history of economic literature, has a work been published which is at all comparable to this in its value to the American student of finance.

Professor Schanz earned his reputation by the thorough work displayed in *Englische Handelspolitik gegen Ende des Mittelalters*, published about ten years ago, as well as by several minor works on the history of labor. In 1884 he started the *Finanzarchiv*, which is still the only serious review devoted exclusively to the science of finance. In this periodical Dr. Schanz has been publishing for the past few years detailed histories and descriptions of the tax systems of different German commonwealths, which have challenged admiration for their thoroughness and accuracy. And now he offers to the scientific world a work which stands unequalled in magnitude of scope and detail of treatment.

A word first as to the methods of the author. The opening volume is devoted to a sketch of the general development. A preliminary chapter treats of the federal taxes and the general situation; a second chapter, of the general direct taxes in the cantons; a third chapter, of the licenses, succession duties, military tax, *etc.*; a fourth chapter, of the indirect taxes on consumption; while a final part is devoted to the questions of local taxation. The three following volumes take up each of twenty-five separate cantons or commonwealths in detail; describe the history, not only of all the changes, but of all the attempted reforms;

and close with a minute statement of the existing condition in each canton. The fifth and final volume contains the text of all the important laws and administrative ordinances for each commonwealth since the beginning of the century. It will be seen at a glance how stupendous must have been the labor necessary to complete such a task.

Let us now endeavor to ascertain in what respects the work is especially important to Americans. Professor Schanz begins by accepting the theory advanced by the present writer regarding the historical development of taxation and the position of the general property tax in that development (volume i, pages 52 *et seq.*). He shows that Switzerland like the United States has retained the mediæval property tax up to this day; but he further shows—and this is the important point—that Switzerland, *unlike* the United States, has successfully endeavored to reconstruct its property tax and to supplement it by another system which has brought it more into harmony with the needs of the present century. The conception of general property as the basis of taxation has been permeated, gradually but with ever-increasing rapidity during the past thirty years, with the ideas of product and income. The attempt to realize the principle of ability to pay has resulted in a dissatisfaction with the old property tax and a remodelling of the whole system. The methods in the various cantons may be summed up as follows: (1) a property tax plus a general income tax; (2) a property tax plus a partial income tax; (3) a property tax plus a supplementary income tax, in the sense that only the surplus income above a certain percentage supposed to represent the interest of the taxable property is assessed; (4) a real property tax plus a general income tax. Of these three of the smaller cantons still hold to the general property and product tax; while only one canton clings to the once universal, but still most primitive system of the single land tax.

This is the one great lesson to be drawn from Swiss experience. It ought to be sufficient to silence all those enthusiasts who cry out for a retention of our present American system and point with triumph to the only democratic republic in Europe as practising the same method. On the contrary, the one great effort of the Swiss legislatures during the past half-century has been to supersede the general property tax, not necessarily by the income tax, but by some form of income taxation by some system which, directly or indirectly, makes not the property but the product of the property, not objects, but individuals, the basis of taxation. As Professor Schanz sums it up: "Ueberall drängt sich eben mit elementarer Gewalt der Gedanke durch, dass es doch nicht das Vermögen, sondern das Einkommen ist, welches man eigentlich treffen will."

But let us leave this main fact, which might amply serve as a text

a whole volume on American taxation, and turn to some of the other points of chief interest to Americans. The question of taxation of corporations is not discussed as a whole by Professor Schanz, but the facts are presented. The most important have been used by me in an article in the present number of the *POLITICAL SCIENCE QUARTERLY*, and the topic may therefore be passed over in this place. Other points upon which the Swiss experience is extremely instructive are: the different rates of taxation for the different kinds of property; the various methods of assessment, according to market value, insurance value or par value; the exemption of church or other property; the distinction between funded and unfunded income; and the great subject of double taxation in all its various forms. But the four chief points to which I desire to call attention are these: the methods of controlling assessments, the question of progressive taxation, the succession taxes and the system of local taxation.

Switzerland, like the United States, has tried all forms of assessment for the general property tax—self-assessment and official assessment, oaths and no oaths, publicity and secrecy; and all have proved equally inefficient. One institution, however, has been developed in the last few decades that is peculiar to Switzerland. It is that of the inventory (*Inventarisatio*n). As soon as a tax-payer dies, his entire property is seized by the government and held until an exact inventory is made out. If the inventory discloses fraud in the previous self-assessments, punitive taxes must be paid ranging in some cantons over a period of ten years. This method of control is of course based on the right idea. But it has its objectionable sides. It must be distressing, to say the least, to the family of the deceased when the tax officials clap their seals on the property, as it were in the very chamber of death. It has also its weak sides. Those who have a short time to prepare for death commonly give away a large part of their property. Again, the inventory naturally becomes a less trustworthy guide the farther back we go, so that at its best it can serve as an index for a very few years only. But notwithstanding all these defects, the inventory has done good service in increasing the tax receipts, and it forms to-day the chief subject of dispute in the Swiss cantons. Perhaps the principle of back taxes is partly applicable in the United States.

Another point which has attracted the attention of foreign countries is that of progressive taxation. Without going into the arguments *pro* and *contra*, it may be said that Switzerland has now definitively accepted the principle of graduated taxation, and that the cantons apply it not only to income but also to property taxes. Since 1870 especially, a large majority of the commonwealths have inserted the principle of progressive taxation into their constitutions, while only a few constitutions

fix the limit of the progression. And the system, far from causing any wholesale exodus or any such startling confiscation as we read of from time to time in the American newspapers, has proved so satisfactory that wherever tried, it has never been abandoned. There also Switzerland is not at one with the United States.

Thirdly, about two-thirds of the Swiss commonwealths have supplemented their system of direct taxation by taxes on inheritance and bequests. This movement is an old one and antedates (except in Bern and Zürich) the movement to supplement the property tax by an income tax. We in the United States are still in the first phases of the reform; for we are now agitating only for an extension of the collateral-inheritance tax system. Switzerland has passed beyond this phase. Its system applies not only to collateral inheritances, but to all inheritances and bequests. The rate ranges from three per cent in case of husband or wife in Waadt, to as much as twenty per cent for non-relatives in Aargau.

Finally, the methods of local taxation are very instructive. Only a few cantons pursue the same system for both local and commonwealth purposes. In most cases the income tax is a commonwealth tax, while the local tax is a property tax, and often a real-property tax. In addition to the local property tax, however, we find very generally a local "household" tax, which is practically a system of poll taxation designed to reach some of those who escape the real-property tax. The whole local tax system is marked by two significant facts. In the first place, the idea of progression, which is almost universally applied to the commonwealth taxes, is absent in the local taxes. The local property taxes are almost uniformly proportional and not progressive. Secondly, the exemption of debts — mortgage debts as well as others — is permitted in state taxes, but is found only to a very limited degree in local taxes. To state the reasons of this distinction and the important inferences to be drawn therefrom would lead me entirely too far in this brief review.

Enough has been said to show the importance of Professor Schanz's work. It does not pretend to discuss questions of theory, and yet almost every page contains matter of more significance to the average American than whole chapters of some of the common text-books on finance. In some few questions of finance Switzerland has a little to learn from us; in most matters we have an important lesson to learn from Switzerland. What that lesson is has been only faintly outlined in the above remarks. It is to be hoped that its full significance will ere long be appreciated by every American student and by every American legislator.

EDWIN R. A. SELIGMAN.

*Analisi della Proprietà Capitalista.* By ACHILLE LORIA.  
Torino, Fratelli Bocca, 1889. — 2 vols. gr. octavo, 777, 474 pp.

"*Ingens iterabimus aequor*," as the author says at the end of his first volume, looking forward to the second. Italy has long been giving us much of our best economic literature, and this is her masterpiece. Already well known by his work on the *Law of Population in the Social System* (1882) and his monograph on the *Influence of Ground Rent in the Topographical Distribution of Industry* (*Rendiconti dell' Acc. dei Lincei*, 1888), Loria now presents his *magnum opus* in a radical examination of the phenomenon of profits, viewed in the Smithian sense of gross return for the use of capital. Loria is a professor in the University of Siena. His essay has been crowned with a royal prize offered for the best discussion of an economic topic. Its first volume sets forth the theory abstractly, the second seeks to justify it *a posteriori* by a careful industrial history of Europe and the colonies. This at least is well done, and the reader, even should he feel obliged to eliminate the author's theorizing, will find the volume a most valuable addition to economic history. The chief topics in this historical survey are *profits* as based (1) on slavery, (2) on serfdom and (3) on wages. The book reminds one in many ways of Marx's *Kapital*. Starting, like that, from Ricardo and essaying to complete him, it breaks as radically with economic orthodoxy, betrays the same keen analysis, a more consistent logic and an even more astonishing mastery of economic literature, whether standard or recondite, old or recent. In the last respect the author is second to Roscher alone. While he is familiar with the libraries of Rome and Berlin, long study in the British Museum has rendered him specially fond of the English economists. He refers to them oftener than to the German, far oftener than to the French. He is at home in the latest American and Austrian economic treatises, and more than once quotes from the Russian. He is well read in philosophy too, even in authors so wide apart as Hegel and Herbert Spencer. Nor do his learned references seem artificially paraded. The broad scope of the *Analysis* affords space and occasion for review of every cardinal topic in political economy, — population, value, money, interest, taxation, — and upon none of them does Loria fail to show himself a master. Specially noteworthy is his conception of "natural" or "pure" wages, and his proof that it need not be starvation wages.

The theoretical part of the work canvasses the same problem which engaged Marx, though solving it rather by the method of Henry George. Loria's main thesis is that profits arise solely from the suppression of free land. So long — this is the thought of chapter i, volume i — as free lands exist, accessible to the laborer, either "dissociate economy" or



mixed association" prevails,—mere laborers working for capitalists while they can thus earn more than by pure labor on land. So long, in Loria's technical phrase, they have "option," and neither wages nor profits exists as a category by itself. Both arise, however, as soon as land ceases to be free, wages henceforth falling below the "natural" rate prevalent till now, while profits exceed the old normal rate involving the illicit element so familiar to Marx's readers as "surplus value." Social profits break up into individual profits through the operation of value, whose analysis forms the subject of the second chapter. There is thus competition among capitalists to increase their profits, tending for a time to keep wages above the minimum of the laborer's existence and to restore to him the "option." This constrains capitalists, in order that profits may continue, to force wages down to the existence minimum, precisely according to Ricardo's iron law. For this they employ various means,—artificial elevation of land values, total reduction of wages, depreciation of the circulating medium, employment of women and children, lengthening of the labor day and conversion of variable capital into fixed. All this is studied in the third chapter, where Loria thinks he lays bare the very "interior life" of profits. Capital now has free field for development within itself, the result of this process, detailed in chapter iv, being its subdivision into interest, reward to oversight and rent. In the fifth chapter he argues that profits can continue at an elevated rate only by the systematic creation of an excessive population. The gradual decrease of profits, involving the reduction of wages to a minimum, makes possible the continuance of profits, while the systematic excess of population now gives way to an automatic excess.

But the very moment when profits, thus become automatic, seem to defy every attack, begins the inevitable negation of profits. The increasing limitation of production brought about by private ownership of the soil reduces profits below the minimum, so that the continuance of production becomes irreconcilable with capitalistic economics, and it is necessary to substitute for that form of industry which is based upon the suppression of free land, the superior social form built upon free land; that is, to restore mixed association by establishing the marriage bond between man and the land [vol. i, p. 776].

And again in another place he says:

At this point the wages class intervenes in economic evolution for the first time with its own energy, provoking therein a radical change, *viz.*, the passage from the unconscious to the conscious. And since the reaction of the wages class is merely the result of the progressive fall in the rate of profits, which in turn results from the economic development, it is evident that there is innate in the very nature of this process that final metamorphosis which converts it from automatism into a free and human movement. From this spontaneous movement of the laboring class, which characterizes the extreme bound of capitalistic development, triumph is inevitable. Numbers, which form the



weakness of the laboring class in the economic strife, form its strength in the social, rendering its demand irresistible; and this finds its crown in the re-establishment of free land and the institution of that social form which is its necessary product [*ib.*, p. 775 *sq.*].

The author nowhere pictures this process in detail, giving us no hint whether every man is to become an agriculturalist, as Tolstoi thinks well, or whether the masses are to regain their interest in the soil through some machinery of taxation, as Henry George advocates. We hope that Loria has in store a constructive treatment of this tremendous problem.

It is hazardous, after but a single reading, to express a final opinion upon any complicated course of thought like that before us. It were easy to question and even to refute much which is here advanced. In many of its links the chain of reasoning seems weak. But we are impressed that Loria has substantially made out his main thesis, and that the practically absolute ownership of land in modern times has wrought social miseries which most economists disincline to recognize. Be this as it may, whoso, hereafter, will deeply and broadly discuss the social question in any of its main phases must reckon with Loria's *Analysis*.

E. BENJ. ANDREWS.

*Le Socialisme d'État et la Reforme Sociale.* Par CLAUDIO JANNET, Professeur d'Économie Politique à l'Institut Catholique de Paris. Paris, Librairie Plon, 1890. — 8vo, xiv, 606 pp.

*Ferdinand Lassalle: Sein Leben und Wirken.* Von DR. ADOLPH KOHUT. Leipzig, Verlag von Otto Wigand, 1889. — 12mo, ix, 210 pp.

Socialism and social reform continue to be excitative of a great deal of literature. These subjects have aroused the public imagination, and every one who describes what that vague terror, socialism, really is, or who suggests a plan of reform, is eagerly listened to. Two books touching these points lie before us. M. Jannet writes an important work defining the position of the French Catholic church on the social question; while Dr. Kohut adds one more contribution to the Lassalle cult.

It is surely a matter of very great importance, what position the Christian church, and especially the Catholic church, on the continent of Europe takes on the social question. Its utterances must be listened to with great respect; and it is not too much to say that every right-minded man will listen with the hope that out of the church's wisdom may come some absolving word showing us the true way out of our difficulties. The layman, reading the work of the Catholic theologian

with such a hope, will probably experience a feeling of despondency. The book is a curious mixture of Catholic theology, *laissez-faire* economics and French legitimist politics. Even passing over what the religious reader might term cant, the economic and political notions appear to me to be very unsatisfactory. The gist of the book will be found in the first essay, "On the Relation of the State to Labor" (*L'Etat et le régime du travail*), and the theoretical position of the author may be defined as follows. We must distinguish, in the first place, between *l'ordre politique* and *l'ordre économique*. The first pertains to the state, the second to the family. In economic affairs, therefore, the state is not to interfere. It is true that in the present economic order mankind suffers from many evils. But such evils are due to original sin by which man fell from grace. Neither are we to expect ever to realize the perfect economic harmony (contrary to Bastiat), for that would contradict the curse laid upon man. Some progress has been made, but progress is always through suffering. The state having to do only with *l'ordre politique*, the individual must be left free to pursue his own economic interests. Each one must have liberty to choose his own occupation, to exercise it where he pleases and to dispose of the proceeds. Property is a natural right and cannot be interfered with by the state. The state has no right to compel men to enter associations, but on the other hand should allow freedom of association with certain limitations. The state interferes with the economic order only to prevent violations of the moral law. Factory laws, restrictions on the employment of women and children, the prohibition of work on Sundays, — are all justified on this ground. The antagonism existing at present between employers and laborers is due not to economic difficulties, but to human nature corrupted by envy. Remedies for present evils are first of all the revival of true religion; subordinate to this are the "*patronages*, *chefs d'industrie*," Christian benefit societies, co-operation, charity, and a good administration of the state in finance and politics.

The criticism on all this is that it is not precise enough to carry us far in the solution of economic problems. Undoubtedly if the grace of God filled the hearts of all men and led them to observe the ten commandments and exercise love and charity, much evil would disappear from society. But what we want is guidance in practical economic affairs. M. Jannet affirms that the natural economic order demands freedom of labor and non-interference of the state. The state is to interfere only when the moral law is violated. But it is evident that it must be merely a subjective judgment of the author as to when the moral law is violated sufficiently to justify the interference of the state. Practical examples show how uncertain this judgment is. It is more

to prohibit labor on Sundays and feast days ; it is immoral to fix an eight-hour labor day. National factory laws are moral ; but international factory laws would be immoral, because the division of humanity into nations is divinely ordained. Laborers should be allowed to form associations, so long as they do not pursue ends contrary to religion and morality, such as systematic suspension of labor ! On the other hand the right of property is absolute, *potestas procurandi ac dispensandi*, and the equitable dispensation must be left to the caprice of the individual.

The first essay is followed by special studies of efforts at social reform, such as the peasant unions of Germany, reform of the law of inheritance, compulsory insurance of workingmen, co-operative societies, Catholic associations *etc.* Many interesting facts are given, especially in regard to the Catholic associations in Germany and France. But the standpoint is always that assumed in the first essay. Every interference of the state is viewed with horror and the workman is commended to the pity and charity of his employer. The author even goes so far as to denounce the "Christian socialism" of the German Catholics whenever it inclines toward state-help. He declares roundly that there can be no such thing as Catholic socialists.

The importance of Lassalle as a scientific expositor of socialism is diminishing before the profounder philosophy of Rodbertus, which is exercising such an influence on German economic thought. But Lassalle remains the one romantic figure in the decidedly commonplace and not very attractive crowd of modern socialistic agitators, and his writings form a delightful contrast in clearness and interest to the obscurity and tediousness of Marx and Rodbertus. Dr. Kohut sketches in a popular way the episodes of that curious life : Lassalle's youth, the chivalric devotion to the Countess von Hatzfeldt, the brilliant literary career, the brief connection with Bismarck, the arduous organization of the Social Democracy and the tragic but undignified end in which vanity, more than passion for Helene von Dönniges, involved him. Through mere narration, such a life cannot win either respect or admiration. It is explicable only by taking Lassalle's own maxim that great things are accomplished only under the influence of strong passions. Detailed biographical inquiry, however, is apt to reveal too clearly the ignoble side of these same passions. We do not believe that anything is to be gained either for science or for literature by further investigation of the foolish adventures into which Lassalle's vanity and self-consciousness led him. In fact we know too much already.

On the other hand, Lassalle's biographer can always find an important task in depicting him as a personal and intellectual force in the social movement of the nineteenth century. As an orator and a writer he impressed on the lower classes a clear and vivid theory of their position

in society and their rights; and although his particular economic proposals have not prevailed, the impress of their theory still remains. It is in this sense that his life, and more especially his words, are worthy (perhaps not indeed in equal degree) of such scientific biographical study as John Morley has given to Voltaire and Rousseau, those intellectual forces of the eighteenth century. To this of course Dr. Kohut's book can lay no claim.

R. M. S.

*Economic and Social History of New England, 1620-1789.* By WILLIAM B. WEEDEN. Boston and New York, Houghton, Mifflin & Co. — 2 vols., 964 pp.

The author of this work has endeavored to meet a long-standing want. The economic history of this country is still to a large extent an unexplored field. An effort to trace the development in that line of a section so important as New England is sure to be welcomed by all scholars. Something better is wanted than the occasional chapters of Palfrey, the work of Lodge or even the very excellent account of New England in 1650 which is given by Doyle. More thorough investigation and detailed statement are needed. This can well be done by sections — the northern, the middle and the southern — because social conditions peculiar to itself have to a certain extent affected each region. But a history of social manners and customs is not what is wanted. An ample literature already exists upon that subject. Every historian has devoted attention to it. Books have been written specially upon it. Magazine articles almost beyond number exist, which tell us how our ancestors dressed, ate, entertained their friends, made love and spent, in short, all the days of the week. Therefore it seems to the writer that Mr. Weeden might profitably have omitted a mass of material which he has introduced concerning these matters.

The work shows extensive reading, not only in colonial records and historical collections, but in local histories and authorities still in manuscript. Sources of information have been used which earlier writers have neglected, or have not been able to reach. The result has been the accumulation of a vast number of facts about early New England agriculture, fisheries, manufactures, trade and means of communication. The methods of exchange employed by the early settlers are also described, though relatively less space is devoted to the later experiments of the colonies in the use of paper money. A table of prices is appended to the work, covering the entire period of which it treats, but it is not complete enough to be of scientific value. The course of trade with the French and Dutch colonies of the West Indies and with the states of continental Europe is described at length. One

can see from this book to how large an extent the foreign trade of New England was carried on in defiance of the Navigation Acts. The insufficiency of administration under them is emphasized, but almost no account is given of the efforts made and the methods actually adopted by the home government to secure their enforcement. The sections on piracy show how imperfect was the system of ocean police which then existed for the protection of those engaged in international trade. The evidence of a relatively low standard of commercial morality among New Englanders in the 17th and 18th centuries is abundant.

But there are certain faults in this work which prevent it from being anything better than a storehouse of facts, of which the future historian may make use. Its arrangement is poor. The subdivision into periods is not particularly clear or suggestive. Amid a succession of chapters, cut up into brief paragraphs, each bristling with local and personal details, the reader becomes confused and is unable to follow the development of the subject. This is especially true of the earlier chapters of the first volume. One would almost infer that some of the pages had been printed from the jottings of a note book without change. Detached and unconnected sections concerning the iron industry, for example, are to be found on pages 174, 177, 181, 183, 186, 189. Interspersed among these are paragraphs on a variety of other subjects. Further, upon pages 200 and 201 we find paragraphs, side by side, concerning the building of woollen mills, the building of sawmills, the mining of block lead, the state of morals in Connecticut, the arrival of certain Jews at Newport, R.I., the rate of interest in England, the supply of lumber, the business of the Massachusetts mint, the building of iron works, the use of cider and malt, and sales of wheat by John Hull. Other similar examples might be cited. So imperfectly have the materials of the work been digested, that much of it has been left in the form of unnecessarily complicated annals.

It is not easy for an American to treat with fairness the policy of the Navigation Acts. In order to do that, it is believed that one must put himself to a certain extent in the place of the British government. He must keep before him the idea that England was contending against Spain, France and Holland, at first for the preservation of her colonies and then for commercial supremacy. He must divest himself wholly of the dogmas of natural right and *laissez faire* upheld by the Manchester school, and to a certain extent of the theories of Adam Smith himself. He must study the writers on trade and economics whose works were published or read two centuries ago. Finally he must examine the testimony given by merchants and others before the English Board of Trade, the reports of agents sent to the colonies and to foreign countries

and the representations made thereon to the Privy Council. Upon these was based the trade legislation of the 18th century. It will then appear that the policy adopted was not wholly irrational or ill-considered. It was an honest, though, as it proved, a mistaken endeavor to meet real needs. It was not intended to oppress the colonies. Those which did not revolt probably felt its restrictions more than those which did. The fault of the author, as of all American writers who have hitherto treated of the subject, is that they have looked at it almost wholly from the colonial standpoint. Into their treatment of the subject they have also introduced a good deal of cheap rhetoric about American liberty and enterprise which, to say the least, is out of place in scientific discussion.

H. L. OSGOOD.

*La Vie Politique à l'Étranger*: 1889. Publiée sous la direction et avec une *Préface* de ERNEST LAVISSE. Paris, G. Charpentier et C<sup>ie</sup>, 1890. — ix, 486 pp.

As M. Lavissee says in his preface, this new annual shows that "la curiosité du dehors s'est réveillée en France." This will be no news to those who have followed the admirable work of the French Society of Comparative Legislation, or even looked into the *Annales* of the French School of Political Sciences; but the *Vie Politique* is at least a new evidence of the intelligent curiosity to which M. Lavissee alludes. It is a record of the leading political events of the year in all parts of the world except France. Every state except France—even such minute independencies as San Marino and Altenberg (Moresnet)—has its place in the scheme. The work has been divided among a number of writers, but the volume shows unity of plan and a substantial evenness of execution. The record of events in the more important countries is fairly full; not only the strictly political events but also the economic and social movements are followed; the reader will find, for example, accounts of the labor troubles of 1889 and of the relations of church and state throughout Europe. In some cases the treatment of single topics outruns the limits of a chronological record. The account of the German colonial policy goes back to 1884; and the title on the United States, by M. Joseph Chailley, includes suggestive paragraphs on the character of the American people, the spoils system, the protection policy and the restriction of immigration.

It will be seen that this new annual is unlike any of those now in existence. It covers, to a certain extent, the same ground as the *Europäischer Geschichtskalender* of Schultess (started in 1860); but there are important differences in plan and scope. The *Geschichtskalender* gives under the single headings a purely chronological record of events in

each country, followed at the end of the volume by a brief narrative history of European politics. The *Vie Politique* gives a narrative history of each country, but none of Europe at large, so that the movement of diplomacy must be sought under the titles devoted to the single states. The *Geschichtskalender* gives more original documentary material and is in so far of greater value to the student. The *Vie Politique* is much more readable and will appeal to a wider circle. The *Geschichtskalender* is weak in its extra-European portions; and it is here that the *Vie Politique* is particularly strong, devoting, for example, no less than 116 pages to Africa. The German annual is especially full as regards the movement of German politics; the French annual, as its title implies, excludes France. (France already possesses an excellent record of internal politics in M. Daniel's *L'Année Politique*, issued by the same publishers.) Finally, the *Vie Politique* attempts to follow the movement of political literature. The bibliography is not very full in the present number, but M. Lavissee promises that it shall be "developed."

There are occasional mistakes in the spelling of German and English words, especially of proper names, but not so many as one expects in a French book. There are not many errors of fact, even in unimportant details — but Secretary Tracy will be surprised to learn that he was at one time "maire de Brooklynn" (page 368), and the discovery of "trois *présidents* à la fois" in West Virginia will startle all Americans.

M. S.

## RECORD OF POLITICAL EVENTS.

[From May 1 to November 1, 1890.]

### I. THE UNITED STATES.

#### 1. NATIONAL AFFAIRS.

**THE ADMINISTRATION.**—In foreign relations the negotiations in reference to the Behring Sea seal fisheries have been most prominent. Secretary Blaine and Sir Julian Pauncefote have been in constant communication, but up to July 19, the date at which the published correspondence terminates, there was no near prospect of settlement. Without insisting upon the claim that Behring Sea entire was within the jurisdiction of the United States, Mr. Blaine at first held that the indiscriminate slaughter of seal on their way to the breeding grounds, threatening, as it did, the extinction of the species, was *contra bonos mores*, and hence justified measures of repression. The British government regarded the destruction wrought by the Canadian sealers as overrated, but proposed through Sir Julian Pauncefote a joint convention between the United States, Great Britain and Russia providing for a mixed commission of experts to clear up the disputed question of fact in the case, and establishing meanwhile a close season for seals during the months of migration, with a further prohibition of all hunting within ten miles of the shore of the breeding islands. This proposition was rejected by the United States on the ground that a ten-mile limit was wholly inadequate to its purpose, and that, moreover, Great Britain had in 1888 itself offered to keep its vessels 600 miles from the islands. An offer was made in turn to arbitrate, if, pending the settlement, the British government would either by command or even by request prevent its subjects from hunting the seals for the approaching season. Lord Salisbury announced the impossibility of accepting this offer, except under conditions which Mr. Blaine would not admit. This was in June. In the meantime, orders were issued for the despatch of United States revenue cutters to Behring Sea, in accordance with law, to prevent poaching. Thereupon, on June 14, the British minister submitted a formal protest against any enforcement by the United States of "their municipal legislation against British vessels on the high seas beyond the limits of their territorial jurisdiction," and declared that the United States would be held responsible for the consequences of any such acts. According to report, the State department was notified verbally that British naval commanders had been directed to release any Canadian sealers which might be seized by the revenue cutters. No seizures were reported during the summer. The later phases of the negotiations as published reveal a strong tendency on Mr. Blaine's part to assert the absolute rights of the United States over so much of Behring Sea as had been recognized as subject to Russian control, *viz.*, 100 miles from the coast. The Russian ukase cor



cerning the matter did not, according to the secretary, "declare the Behring Sea to be a *mare clausum*." — Protracted negotiations have been in progress with the French government in reference to the **exclusion of American hog products** from France on sanitary grounds. Mr. Reid, the American minister at Paris, addressed to M. Ribot, the French minister of Foreign Affairs, an elaborate communication on July 3, insisting upon the healthfulness of American pork, showing the evil effects of its exclusion upon the French people, and intimating that a conciliatory policy in this matter would increase the chances of a removal of the American duty on works of art and lessen the likelihood of a prohibition of French wines. Public sentiment in both France and Germany seems to be turning against the restriction. A Meat Inspection Bill was passed by Congress in August [see below, Congress] which was intended to give a sharp stimulus to this tendency. — The difficulty between the United States and Great Britain on the one hand and Portugal on the other, in the matter of the **Delagoa Bay railroad**, has been submitted to the arbitration of the Swiss government, before whose representatives proceedings in the matter were begun in August. — **A convention with Mexico** was signed in July, defining the times, places and circumstances under which the troops of either country may cross the boundary in pursuit of hostile Indians. — In a series of messages the President has transmitted to Congress, with recommendation of action thereon, the **projects of the International American Conference** in reference to an intercontinental railway, an international American bank, an international monetary union *etc.*

**The Treasury.** A stringency in the money market, due, it was said, to heavy investments in foreign goods to anticipate the new tariff, caused the secretary of the Treasury, in the middle of August, to offer to redeem at par \$20,000,000 of 4½ per cent bonds and to prepay interest to September 1, 1891, when the term of the bonds expired. He also offered, September 13, to purchase \$16,000,000 of four per cents of 1907, with the same general object in view. Liberal disbursements under these offers and otherwise seemed to relieve the pressure.

**Department of the Interior.** **Negotiations with various Indian tribes** on the borders of Oklahoma have been in progress, in order to extend the boundaries of the territory by purchase. Obstacles have been raised by cattle companies who hold leases of large tracts from the Indians and who have opposed a passive resistance to the orders of the government to vacate the lands. Agreements have been made with the Iowas, Sacs and Foxes, Pottawatomies, Shawnees, Cheyennes and Arrapahoes, which will be submitted to Congress for approval. About 4,500,000 acres of land are involved. Commissioner Morgan declares, in his annual report, that it has become the settled policy of the government thus to destroy the system of reservations and tribal relations, and by severalty allotments to settle the Indians upon their own homesteads. — The Congressional investigation of the **charges against the Civil Service Commission** resulted in a report in June censuring one of the commissioners for laxity of discipline in the administration of his office. — **The Census** was duly taken in June. Many complaints of inaccuracies in enumeration were raised, and a number of cities, including

New York and Brooklyn, instituted re-counts which showed results widely differing from the official. A formal application by the mayor for an official re-count in New York was denied by the secretary of the Interior, October 27. Eminent statistical authorities, judging from comparison with the average rates of increase heretofore, believe that the totals of population as officially obtained are not trustworthy.

**Appointments to office.** The following have been made by the President: assistant secretaries of the Treasury, Oliver L. Spalding and A. B. Nettleton; assistant secretary of the Navy, James Russell Soley; first and second assistant Postmaster-generals, Smith A. Whitefield and James Lowrie Bell; minister-resident to Portugal, George S. Batcheller; to Siam, Sempromius H. Boyd. The ministers-resident to Bolivia, Denmark, Switzerland, the Hawaiian Islands and Paraguay and Uruguay have been raised to the rank of envoy-extraordinary and minister-plenipotentiary.

**CONGRESS.** — The session lasted till October 1, and was notable for the amount of legislation actually completed. 16,972 bills were introduced, of which nearly 1400 became laws, many being of the highest importance. The **new powers given to the Speaker** by the rules were rigorously applied by Mr. Reed and contributed materially to limit filibustering in the House. The decision of seven contested elections in favor of the Republican claimants lessened the difficulty of obtaining a Republican quorum, but in the latter part of the session, when absentees became numerous, the Democrats succeeded more or less in obstruction by withdrawing from the chamber altogether at roll-call. — Besides those described under Tariff, Currency and other heads, the following were among the most **important laws enacted**: the Dependent and Disability Pension Act, granting from \$6 to \$12 per month to any soldier or sailor of the Rebellion who is suffering from disability that incapacitates him from supporting himself by manual labor, and rendering easier the establishment of claims by dependent parents; the Anti-Lottery Act, closing the mails to all correspondence and to all advertisements relating to lotteries or other similar enterprises; the Meat-Inspection Act, which establishes a rigid sanitary inspection of meat seeking exportation, provides that whenever the President shall be satisfied that unjust discriminations are made by any foreign state against the importation to, or sale in, such state of any product of the United States, he may direct that such products of such foreign state as he may deem proper shall be excluded from importation to the United States, and authorizes the exclusion by the President of any article of food or drink that he may find to be adulterated to an extent sufficient to be injurious to health; and the Land-Forfeiture Act, declaring to be part of the public domain and open to settlement all lands heretofore granted to any state or corporation to aid in the construction of a railroad, which are coterminous with the part of the railroad not now completed and in operation. — Among the important **measures not yet acted upon finally** are these: a general Bankruptcy Bill, passed by the House of Representatives; a bill to relieve the Supreme Court, by creating a court of appeals in each judicial circuit to intercept much business coming up from the district courts; a bill, modelled on the Oleomargarine Act, to prevent the sale as lard of products not "made exclusively from the fresh fat of slaughtered swine," and to regulate

the manufacture and sale of such products ; a bill to fix six years as a limit to the time in which action may be brought against accounting officers and the sureties on their official bonds ; and the **Federal Elections Bill**. Next to the Tariff, this last measure has excited the most attention through the country. It provides an elaborate machinery for the control of federal elections by supervisors appointed by the federal courts, and may be applied to any district on the demand of 100 voters therein. The purpose of its supporters was avowedly to prevent the alleged suppression of the negro vote in the South. By the Democrats and by a few of the Republicans, chiefly Southern members, it was opposed as an unwarrantable extension of the federal power, and especially as likely to cause race conflicts in the South. Having been adopted as a party measure by the Republican caucus, it was passed in the House, July 2, by a vote of 155 to 149, four Republicans deserting their party. On the 7th of August the bill was reported in the Senate, with very considerable modifications of its extreme features. The prospect of resolute opposition by the Democrats, which, owing to the absence of rules limiting debate in the Senate, was likely to be successful, led to several propositions introducing some form of closure in that body. This idea encountered much opposition even among the majority, and it was finally agreed by the Republican caucus, on the motion of Senator Quay, that the Elections Bill should be laid over till the next session. — **The International Copyright Bill**, which was supposed to have good chances of success, was defeated on a test vote in the House, May 2.

**THE TARIFF.** — An uncertainty in the classification of worsted goods, reaching back over a number of years, was decided by a federal court about May 1 contrary to the ruling of the secretary of the Treasury, which classed worsteds as woolens. The result was the prompt passage of a bill, May 8, to rectify the matter and sustain the position of the administration. The other view was said to have been very injurious to the woolen manufacturers. A protest against the constitutionality of this act, based on the fact that it was passed in the House by a counted quorum, was overruled, October 11, by the board of general appraisers, in an elaborate opinion. The case was appealed to the courts. — **The Customs Administrative Bill**, which at the close of the last RECORD was in the Senate committee, passed with amendments as reported and went to conference early in May. On the 27th the conference committee reported to the houses the bill which finally became law, going into effect August 1. In general the law as passed followed the Senate's amendments mitigating the stringency of the regulations against fraudulent invoices. — The bill for the revision of the Tariff was the most conspicuous feature of Congress's work during the summer. Substantially as reported from the Committee on Ways and Means, it passed the House, after two weeks' debate, May 21. The vote was a strictly party one, except that two Republicans voted in the negative. June 19 the bill was reported from the Senate Committee on Finance with a very large number of amendments, mainly in the way of a lessening of rates. After debating the project during nearly the whole of August and a week in September, the Senate passed it by a strict party vote, September 10. The differences between the houses then went to a conference committee. The

bill as reported by this committee, September 26, was adopted by the House and Senate on the 27th and 30th respectively and approved by the President October 1. On the final vote three Republicans in each house declined to follow their party. The law went into effect October 6. Prominent features of the new schedules are as follows: Steel rails reduced one-tenth of a cent per lb.; tin plates increased from one cent to two and two-tenths cents per lb., with the proviso that they shall be put on the free list at the end of six years if by that time the domestic product shall not have an aggregate equal to one-third of the importations; unmanufactured copper substantially reduced; bar, block and pig tin, hitherto on the free list, receives a duty of four cents per lb. to take effect July 1, 1893, provided that it be restored to the free list if by July 1, 1895, the mines of the United States shall not have produced in one year 5000 tons; a bounty of one and three-fourths and two cents per lb. upon beet, sorghum, cane or maple sugar, reduced in the United States between 1891 and 1905; all imports of sugar free up to number 16, Dutch standard, in color and all above the one-half cent per lb. (formerly from three to three and a half cents), with one-tenth cent additional if imported from a country that pays an export bounty; a heavy increase on cigar wrappers and cigars; a general and heavy increase on agricultural products, *e.g.* on beans, eggs, hay, hops, vegetables and straw; a heavy increase on woolen goods, with a new classification of raw wool designed to give more protection; paintings and statuary reduced from 30 to 15 per cent. The following (among other) additions are made to the free list: beeswax, books and pamphlets printed exclusively in languages other than English, blue clay, coal tar, currants and dates, jute butts and various textile and fibrous grasses, needles, nickel ore, flower and grass seed and crude sulphur. The internal revenue provisions were left practically as fixed by the House and mentioned in the last RECORD. Among the 46 points of difference between the two houses which the conference committee had to adjust, some of the more important were as follows: paintings and statuary, made free by the House and kept at the old rate by the Senate, were fixed at half the old rate; binding twine, made free by the Senate in favor of Western grain-raisers but taxed by the House to protect Eastern manufacturers, fixed at half the House rate; the limit of free sugar fixed at number 13 as voted by the House, instead of number 13, as passed by the Senate, thus including in the free list the lower grades of refined as well as all raw sugar. The question of **reciprocity with American nations** was injected into the tariff discussion by Secretary Blaine in June. In transmitting to Congress the recommendation of the International American Conference for improved commercial relations, the secretary dilated upon the importance of securing the markets of Central and South America for our products, and suggested as a more speedy way than treaties of reciprocity an amendment to the pending tariff bill authorizing the President to open our ports to the free entry of the products of any American nation which should in turn admit free of taxation our leading agricultural and manufactured products. In July Mr. Blaine took up the idea again in a public correspondence with Senator Frye, criticizing severely the removal of the tariff on sugar, as that on coffee had been removed before, without exacting trade concessions in return. He complained

that there was not a section or a line in the bill as it came from the House that would open the market for another bushel of wheat or another barrel of pork. The Senate Finance Committee acted upon the suggestion of the secretary by introducing an amendment to the bill authorizing and directing the President to suspend by proclamation the free introduction of sugar, molasses, coffee, tea and hides from any country which should impose on products of the United States exactions which in view of the free introduction of sugar *etc.* he should deem reciprocally unequal and unreasonable. The rates at which the President is to demand duties upon the commodities named are duly fixed. This reciprocity provision passed the Senate and the conference committee and became part of the law. Senators Evarts and Edmunds opposed the amendment on the ground that Congress could not constitutionally delegate its taxing power to the President. A proposition submitted by Senator Sherman looking to reciprocity with Canada never reached a vote. — **A defect in the act** was discovered about two weeks after it went into effect. A part of section 30, relating to drawbacks on tobacco, which is shown by the records to have been restored to the bill by the conference committee, does not appear in the act as approved by the President. On the basis of this omission, together with the claim of unconstitutionality in the sugar bounties and in the powers given to the President by the reciprocity clause, importers are preparing to contest in the courts the enforcement of the new duties. — **Foreign opinion of the new tariff bills** has been uniformly characterized by bitter indignation. Both the English and the continental press have been filled with expressions of helpless wrath. When only the administrative bill had been passed, Germany and Austria were sounded by the French government as to the feasibility of concerted action of a retaliatory character against the United States, and numerous communications on the subject among the powers have been reported since the revised schedules went into effect. No basis for common action, however, has been discovered. A very lively agitation prevailed all through October in the Lyons silk region, the manufacturers seeking means to escape the consequences of the restriction of their market. In Austria the pearl-button makers around Vienna, whose industry is virtually annihilated, have been the subjects of charitable relief, both private and governmental. There is a great willingness in official circles to gratify the widespread popular demand for retaliation against the United States, but a total lack of practicable suggestions.

**THE CURRENCY.** — The various propositions in reference to the coinage of silver described in the last RECORD occupied much attention in Congress during May. Committees and caucuses worked upon the House bill, and the Senate debated its bill at length. The House was the first to take definite action, adopting on June 7 the bill agreed upon by the Republican caucus. The chief provisions were that \$4,500,000 worth of silver per month should be purchased and treasury notes issued in payment therefor; that these notes should be redeemable in coin, or, at the discretion of the secretary of the Treasury, in bullion at the market price on the day of redemption; that whenever the price of silver should reach \$1 for 371½ grains, the monthly purchase should cease and the coinage of silver should be perfectly free. This bill was considered as very conservative and was distasteful to

the "silver men." The Senate Finance Committee amended it greatly in the direction of the long debated Senate bill, but the Senate itself rejected its committee's work altogether and caused a great sensation by passing, June 17, a radical free-coinage bill, making silver coins and certificates based upon them, as well as upon gold, legal tender for all debts. Efforts of the free-coinage members in the House to force through quickly an agreement with the Senate's amendments were frustrated by bold but much-disputed rulings of Speaker Reed, and in the end the matter went to a conference committee. This committee reported a compromise, which passed both houses and became law July 14. It provides for the monthly purchase of 4,500,000 ounces of silver, "or so much thereof as may be offered"; for the issue of notes based thereon which shall be legal tender for debts "except where otherwise expressly stipulated in the contract," and which shall be redeemable by the secretary of the Treasury "in gold or silver coin, at his discretion, it being the established policy of the United States to maintain the two metals on a parity with each other upon the present legal ratio, or such ratio as may be provided by law." Two million ounces per month are to be coined into standard dollars until July 1, 1891, and after that as much as is necessary for the redemption of the notes. This measure concedes to the "silver men" the elimination of the bullion-redemption clause which had appeared in the House bill, and also gives free coinage for practically the whole product of American mines. It prevents, on the other hand, unlimited coinage, and by its statement of policy seems to afford the secretary of the Treasury a substantial ground for the maintenance of the gold standard. — The amount of silver bullion purchased under the new law from August 13, when it went into effect, to October 31 was 12,276,578 ounces, at an average cost of \$1.14 per ounce.

**THE FEDERAL JUDICIARY.** — Since the close of the last RECORD, the Supreme Court has rendered the following important decisions: The State of Minnesota *vs.* Barber. Held, that the state law prohibiting the sale of beef that has not been inspected by the state officers within twenty-four hours before slaughtering is unconstitutional, as interfering with interstate commerce. McCall *vs.* California. Held, that the state law imposing a license tax on railroad agencies soliciting trade for railways outside of the state is unconstitutional, as interfering with interstate commerce. In a batch of Virginia Coupon Cases, various acts of the state legislature designed to avoid the acceptance of bond coupons in payment of debts to the state were declared unconstitutional, as violations of the original contract with the bond purchasers. — The federal circuit court in New York passed upon an important copyright question, June 26. The case was a suit against the publishers of a reproduction of a British encyclopædia which contained articles copyrighted in the United States. It was held that the American copyright was not lost by the publication of the articles as part of a foreign work. This is directly the reverse of a federal decision in Philadelphia some years ago — in a case involving the same publication.

**THE MORMONS.** — The process of crushing out the polygamous element in Mormonism reached its climax in a decision of the Supreme Court of the United States, May 19, sustaining the constitutionality of the act dissolv-



ing the Mormon church corporation. By this act the charter of the corporation was annulled, a receiver was appointed to wind up its affairs, and its real estate in excess of \$50,000 was escheated to the United States. The court upheld the law in all its provisions and the severity of the blow to the Mormons was revealed in their complete submission in the autumn. — The official termination of polygamy as an institution of the Church of Latter Day Saints was effected at the general conference of the church in Salt Lake City, October 6. The assembly unanimously ratified a manifesto previously issued by President Woodruff, in which he said: "Inasmuch as laws have been enacted by Congress forbidding plural marriages, which laws have been pronounced constitutional by the court of last resort, I do hereby declare my intention to submit to those laws and to use all my influence with the members of the church over which I preside to have them do likewise." It has been observed that this proclamation bases the renunciation of polygamy on the ground of definitely ascertained illegality, and not upon any conviction of immorality in the practice. — The renunciation of the institution is believed by the federal officials to be sincere, and the court has accordingly rescinded the rule excluding Mormon aliens from naturalization. The governor of Arizona reports a constant influx of Mormons into that territory and suggests the enactment of the restrictions which have been put upon them in Idaho and Wyoming.

## 2. AFFAIRS IN THE STATES.

**ELECTIONS AND CONSTITUTIONAL CHANGES.** — Two more **new states** entered the Union in July, Wyoming and Idaho, on the 3d and the 10th respectively. — **Elections for state officers** have been held in Alabama, Arkansas, Georgia, Idaho, Maine, Oregon, Vermont and Wyoming. The only results that excited especial attention were a falling off of the usual Republican majority in Vermont and an unexpectedly large majority for the same party in Maine. Speaker Reed, in the latter state, carried his district for Congress by an especially flattering vote. The new states, Wyoming and Idaho, were both carried by the Republicans. — **Amendments to state constitutions** were voted upon in New Jersey and Georgia. The former state, on September 30, overwhelmingly defeated a proposition to cancel the prohibition of special legislation in reference to the internal affairs of cities and towns; the latter ratified two propositions, one to extend the benefits of the state pension to the widows of confederate soldiers, and the other allowing bills when introduced in the legislature to be read and referred by title. — In New York a commission has devoted some time to formulating an important amendment to the article of the constitution in reference to the organization of the judiciary. — In Mississippi, on August 12, a convention of delegates met at the capital to frame a new constitution for the state. It was understood on all sides that the main object of the assembly was to devise some means of putting a check in the text of the constitution upon the possibility of negro supremacy. Among the 115 members of the convention there were less than half a dozen Republicans and only one negro. The act of Congress by which Mississippi was restored to statehood after the war enacted

as a condition of restoration that the constitution should never be so changed as to disfranchise any citizen or class of citizens entitled by its provisions to vote. This condition the convention declared to be unconstitutional, as inconsistent with the equality of the states. A large number of projects were then discussed looking to a modification of the suffrage. Among them were projects of educational and property qualifications, and for giving the suffrage to women. The plan ultimately adopted limited the suffrage to males; but to be a qualified elector the citizen must produce evidence of having paid his taxes for the past two years and must, in addition, "be able to read any section in the constitution of this state, or . . . be able to understand the same when read to him, or give a reasonable interpretation thereof." A poll tax of two dollars is imposed by the constitution, which may be increased for county purposes to three dollars. The completed constitution was adopted by the convention and put into effect November 1, without submission to the people.—In Kentucky a convention assembled at the capital, September 8, and began the work of revising the constitution which has stood substantially without change since 1852. The difficulties put by its own provisions in the way of amending the old instrument have prevented the modification of even such obsolete clauses as those regulating slavery and requiring that votes at state elections shall be *viva voce*. As might be expected, an avalanche of propositions was precipitated upon the convention as soon as it met, and up to the close of this RECORD small progress has been made toward definite determination of lines on which the chaos is to be reduced to order.

**THE TRUSTS.**—The current of reaction against the combination of corporations has continued unchanged in force. In New York state, the illegality of the Sugar Trust was finally determined by a judgment of the court of appeals, June 24. This affirmed the decision of a lower court, declaring forfeited the charter of a corporation which had become a member of the trust. It was decided to be a violation of law for a corporation to enter a partnership, and an elaborate analysis of the deed of trust convinced the court that this was the essential character of the relationship between the corporation and the trust's board of control. In consequence of this decision the parties interested in the trust set in motion a scheme of reorganization as a corporation under the laws of New Jersey. This scheme, however, was checked by a fresh suit which resulted in a decision, November 1, throwing the concern into the hands of a receiver. In Illinois, the Chicago Gas Trust has been pursued through a variety of legal by-ways since the first adverse decision mentioned in the last RECORD. It was put in the hands of a receiver May 28, and enjoined from transferring any of its property to a Philadelphia corporation which it had called to its aid. In September the city brought suit to forfeit the charter of the trust and of each of the companies connected with it. A decision on a subordinate incident of the litigation held that the law of the state did not authorize the aggregation of capital in corporate form for the mere purpose of investing in the stock of other corporations. The end is not yet.—The mass of legislation against trusts was increased by the enactment, July 2, of a **federal Anti-Trust Law**. Its application is limited of course to interstate and foreign commerce and to the



trade of the territories. By its provisions, "every contract in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce" is declared to be illegal, and every person becomes guilty of a misdemeanor "who shall monopolize or attempt to monopolize or combine or conspire with any other person or persons to monopolize" any part of said trade or commerce. "Person" is expressly declared to include corporation. A suit has been brought under this act against a combination of coal-dealers in Tennessee.

**FARMERS' INTERESTS.**—The conspicuous feature of the last six months has been the enormous development in numbers and in influence of **the Farmers' Alliance**. With a national organization centered at Washington, it has state branches throughout the South and West and is rapidly extending its membership in the Middle and Eastern states. As officially stated, its purposes include the following: To labor for the education of the agricultural classes in the science of economic government in a strictly non-partisan spirit; to develop a better state, mentally, morally, socially and financially; to create a better understanding for sustaining civil officers in maintaining law and order; to suppress personal, local, sectional and national prejudices, all unhealthy rivalry and selfish ambition; to assuage the sufferings of a brother or sister, bury the dead, care for the widows and educate the orphans; and to protect the principles of the Alliance unto death. In politics it maintains a strictly non-partisan attitude, while expecting its members to work in their respective parties to secure just recognition of the rights of the farmer. "All questions in political economy will be thoroughly discussed, and when the order can agree on a reform as necessary, they will demand it of the government and of every political party, and if the demand goes unheeded they will devise ways to enforce it." Among the reforms which have been agreed upon as necessary are these: The abolition of national banks and the substitution of legal-tender treasury notes for the national-bank notes; legislation to prevent dealing in futures; the free coinage of silver; the prohibition of alien ownership of land; state ownership of the means of communication and transportation; and — what has attracted more notice than all else — **the sub-treasury scheme**. This last-named project has been formulated in a bill and introduced into both houses of Congress. It is substantially this: On demand of 100 citizens of any county producing yearly \$500,000 worth of cotton, wheat, oats, corn and tobacco, a sub-treasury shall be established, including warehouses, elevators and other facilities for handling these commodities. The manager of the sub-treasury, elected every two years by the people of the county, shall receive on deposit such of these commodities as may be offered, giving a negotiable warehouse receipt therefor and advancing to the depositor treasury notes equal to 80 per cent of the market value of the deposit. The produce may be redeemed by the presentation of the warehouse receipt and the payment of the amount originally advanced on it, together with interest at one per cent for the time elapsed and stated sums for insurance, warehouse expenses *etc.* This project is especially popular in the Southern branches of the Alliance and has been used as a test in determining the endorsement of candidates for office. The ideas which are especially potent among the farmers of the Northwest were noted in the last RECORD. It is in the South

that the most startling results have been produced by the farmers in practical politics. In Tennessee and in Alabama they have dictated the Democratic nomination for governor. In Arkansas, the Alliance candidate was endorsed by the Republicans. In all the Southern states aspirants for Congressional honors have been obliged to pass the farmers' test. The Democratic party organization in South Carolina was taken possession of bodily by the farmers, under a leader named Tillman, who, after a desperate struggle with the old leaders, became its candidate for governor. In Kansas, the Republican organization is threatened with a similar fate.

**LABOR INTERESTS.** — The concerted demand for **the eight-hour day** which was inaugurated May 1 has met with very general success in the building trades, where it was especially pressed. Strikes have been frequent throughout the country in all occupations, though not generally of great importance. That which attracted the most attention was the strike of the switchmen and yardmen of the New York Central Railroad, August 9. The men were ordered out without warning by the authorities of the Knights of Labor, and the issue with the company was made on the allegation that men had been discharged for the sole reason that they were Knights, and that a deliberate purpose was manifested to destroy the order. Master Workman Powderly and the central executive of the Knights sought in vain to bring the railroad officials to submit the difficulty to arbitration, and an attempt to bring about a general strike of railway employees throughout the country having failed, the company gained a complete victory. It was denied by the company that men had been discharged solely because of their connection with the Knights of Labor, but no explanation was given that could be construed as a recognition of the right of the Knights to review the company's action. The men who struck were refused re-employment and their places were after some confusion filled by others. Several lawless acts by the strikers having lost them all public sympathy, the company on October 1 issued an order announcing that "it objects" to its employees being members of the Knights of Labor, on the ground that "such membership is inconsistent with faithful and efficient service to the company." Mr. Powderly considered this action as proving the company's long-cherished design of breaking up the order. — **The hostility between the Knights and the Federation of Labor** assumed an acute form in a bitter controversy in June between Powderly and Gompers, the respective heads of the two orders. Each charged the other with a variety of offenses against the true interests of the workingmen.

**THE LIQUOR QUESTION.** — Interest under this head has been centered chiefly in the **effects of the original-package decision**. As was predicted when the Supreme Court announced its opinion, state prohibitory and local option laws have been everywhere nullified by the sale of liquor in packages brought from other states, and of sizes to suit all sorts of demand. In some states even the license laws have been set at defiance, e.g. in Pennsylvania, where the courts have held that under the recent decision no state license was necessary to the seller of imported liquor. The state authorities in Kansas undertook to oppose the "original-package" movement by a series of prosecutions against the sellers on various minor provisions of the state law, and this was met by an injunction from the federal court, restraining the

county officers from prosecuting the alleged offenders. Public sentiment was strongly aroused against the destruction of the prohibitory system. The situation arising from the decision attracted the attention of Congress and bills were early introduced to act upon the intimation given by the court that some national legislation was necessary in the case. The Senate first passed a bill simply providing that liquor brought into a state from without should be subject to the laws of the state "enacted in the exercise of its police powers," just as if the liquor were produced in the state. The House passed a substitute measure of a wider character, enacting that any article of commerce brought into a state should be subject to the state laws, provided that the state should not discriminate in favor of its own citizens or of its own products in its regulation of the sale of the article. Ultimately, however, on August 8, the Senate bill became the law. Cases decided in Kansas and Iowa after the passage of this act held that it was not retro-active and that the state laws passed prior to the federal act were not revived. Accordingly original-package saloons may continue their existence until the states shall enact new laws under the permission of the federal act.

**NECROLOGY.**— May 3, James B. Beck, United States senator from Kentucky; June 23, George W. McCrary, secretary of War under President Hayes; July 13, Gen. John C. Frémont; July 18, Eugene Schuyler, consul-general at Cairo, and well known in diplomatic and literary circles; September 8, Isaac P. Christiancy, formerly United States senator from Michigan; October 13, Associate Justice Miller of the United States Supreme Court and W. W. Belknap, secretary of War under President Grant.

## II. FOREIGN NATIONS.

**INTERNATIONAL RELATIONS.**— The most prominent incidents in the world of diplomacy have been the negotiations and treaties relating to the partition of Africa. England and Germany were the first to reach a definite settlement. The dangerous tension threatened by the conflict of interests on the eastern coast led to negotiations, which lasted through May and June and resulted in a treaty signed July 1. This instrument fixed definite boundaries between the spheres of influence of the two powers both in the eastern and in other parts of Africa, assigned to England the sole protectorate over Zanzibar and, in return for considerable concessions by Germany, transferred to the latter power the island of Heligoland in the North Sea, off the German coast. The announcement of the contents of this treaty immediately excited complaints from France that the establishment of a protectorate over Zanzibar violated a convention of 1862 in which Great Britain guaranteed to France the Sultan's independence, and to which Germany became a party in 1886. Lord Salisbury apologized for overlooking this convention and opened up with France the whole African question. The result was an agreement signed August 5, in which France recognized the Zanzibar protectorate, Great Britain in return recognized the protectorate of France over Madagascar, and lines of delimitation were fixed between the spheres of influence of the two governments in northwestern Africa. An offer of Lord

Salisbury to include the Newfoundland question in the settlement was peremptorily declined by M. Ribot. The relations with Portugal next occupied Great Britain's attention and an agreement was reached August 20 establishing in elaborate detail the boundaries of the two powers' spheres of influence in the region of the Zambesi. The fact that Portugal resigned certain territory which had long been recognized as belonging to her aroused anew the fierce popular hatred of England and the ministry was overthrown. Up to this time the new ministry has not ventured to ratify the treaty, though Lord Salisbury voluntarily modified some of the most unpalatable provisions. In the middle of October two British gunboats entered the Zambesi river against the protests of the Portuguese at its mouth. This action was an anticipation of the treaty and contributed much to the ill-feeling in Portugal against the settlement. After these treaties the only region left where conflict was possible was along the Red Sea. Negotiations with Italy to fix a boundary between her Abyssinian sphere and that of England in Egypt were opened at Naples in September, but very quickly came to a deadlock on the question as to the possession of Kassala, an important trading centre on the route from Massowah to Khartoum. The deadlock seems likely to be permanent. — **The Triple Alliance** still endures. This is perhaps all that can be accepted as certain out of a host of rumors as to the relations of the contracting powers. A persistent report, appearing at the time of the Emperor William's meetings with the Austrian monarch in September, affirmed that the treaty of alliance, though not expiring by limitation till 1892, had been renewed till 1897. This lacks official confirmation. During the summer tour of the German Emperor in the northern countries, there were indications of a disposition on his part to concede something to Russia in Bulgaria; it is believed that the displacement of Prince Ferdinand in favor of Prince Oscar of Sweden or Prince Waldemar of Denmark was broached, but without result. The interview between the German and the Russian Emperor seemed on the whole to leave Russia's attitude toward the alliance more hostile than before. In September, Signor Crispi, in an interview with a French editor, assumed a tone of regret at Italy's relations with France, but any important inferences were vitiated by exuberant laudation of the Triple Alliance in a public address in October. — **In the Balkans** the feature of the period has been the bold and successful policy of the Bulgarian premier in his relations with Turkey. M. Stambouloff kept a strong and even threatening pressure upon the Porte for the sanction of Prince Ferdinand's election and for the recognition of religious and other rights to the Bulgarians in Macedonia. As Russia was at the same time demanding in a somewhat ominous manner the payment of Turkey's long-standing war debt, the Sultan hesitated; but in the middle of July, when most of the great powers had endorsed part of Stambouloff's demand, he yielded so far as to sanction the appointment of three Bulgarian bishops to the charge of Macedonian dioceses in which the Bulgarians were in a majority, with general control of educational matters. This concession was considered to involve a great moral victory for the cause of Bulgarian nationality. The Greeks and Servians protested vigorously and Russia expostulated with the Sultan, but without effect. Only when the concession was resolved upon, the formalities in promulgating it were at Russia's desire so arranged as not

to involve necessarily a constructive recognition of Prince Ferdinand. M. Stambouloff did not press the matter of the recognition of the prince, resting content with the ground gained. It was regarded as significant that Germany endorsed the Bulgarian demands while Russia opposed them. Bismarck's policy had been never to come officially in conflict with Russia in this quarter. — **The Anti-Slavery Conference** ended its work June 23. The "general act" in which its projects for the destruction of the slave trade are embodied was signed by all the powers except Holland. This government objected to import duties authorized in the Congo State, as contravening the Treaty of Berlin. The provisions of the convention adopted relate in great detail to ways and means for crushing out the traffic in slaves and include, as incidental to the preservation of the native races, heavy restrictions on the trade in firearms and in alcoholic liquors.

**THE LABOR QUESTION.** — Strikes and the allied forms of agitation have been common throughout the period under review in all civilized lands. The impulse given to the eight-hour movement by the strikes on May 1 has not yet lost its force. As especially noteworthy events of the period may be mentioned: A great demonstration by English trades unions in Hyde Park, London, May 4, in which 150,000 men were in parade and half a million listened to addresses, but without disorder; an international miner's congress at Jolimont, Belgium, May 22-25, attended by delegates from England, France, Germany, Austria and Belgium, at which an eight-hour day was demanded, to be secured by legislation, and a general European strike threatened in case it was not obtained within a year; great disorders throughout May in France, Austria and Spain, especially in the mining regions; and a prolonged and widespread contest in Australia, starting with the sheep-shearers and spreading through sympathy to the shipping, mining and many other industries in all the Australian colonies and even in New Zealand. The trades unions in these regions are especially well organized, with a central governing body constituted on the principle of federation. In this contest, which lasted all through August and September, the chief question was that of the employment of non-union men. As the strikes and boycotts were prolonged, the employers gradually perfected organizations as extensive as those of the workingmen, and by this means succeeded during September in making some headway toward restoring business. The loss by the strikes, especially to commerce, has been enormous.

**GREAT BRITAIN AND IRELAND.** — **The session of Parliament** continued till August 18, but was quite barren of important legislation. The chief measures announced by the government — the Irish Land Purchase and the Tithe Bill — became overshadowed in May by a controversy over a proposition in the budget for devoting a certain sum, made available by the surplus, to the extinction of liquor-sellers' licenses by purchase. A strong opposition to this project, originating with the extreme temperance people but speedily adopted by the Gladstonians in Parliament, showed itself particularly in the consideration of the Local Taxation Bill. It was maintained that to compensate a publican for a refusal to renew a license was to recognize in him a right to the license. Mr. Gladstone called the measure a "publicans' endowment bill." Public sentiment showed a strong hostility to the project,

and in the face of diminishing majorities on every vote touching the subject and a debate which threatened to exclude all other business from the session, the government, on June 23, announced the withdrawal of the disputed licensing clauses of the bill. Meanwhile the slow progress of business had given rise to a consideration by the government of some change in the rules of procedure. Mr. Smith laid before the house, June 17, a proposal for a new standing order, providing that bills which had got through the preliminary stages as far as committee of the whole might be taken up at the next session at the point they had reached, and announced his intention to deal with the Irish Land Purchase Bill under this rule, if adopted. The opposition made it clear that there would be as much difficulty in passing the rule as in passing the bills without it, so it was not pushed, and the ministry finally concluded to abandon all its principal measures, finish up as soon as possible the routine and non-contentious legislation, and begin the next session in November instead of in February, as is the custom. The bill ratifying the cession of Heligoland to Germany and the regular supply bills were passed, with some other measures of minor consequence, and Parliament was prorogued. — The difficulties of the ministry in Parliament were accompanied, just at their height, by rather unusual **difficulties in administration**. In July a strike in the London police force created considerable disturbance for several days. The military had to be called out to maintain order. At about the same time a mutinous spirit developed in the Grenadier Guards, the flower of the British army; and one battalion, for refusing to parade when ordered, was punished by being transferred to a foreign station. The London letter-carriers also manifested the prevailing spirit and caused some trouble by threats of a strike, which were not, however, generally carried into effect. — The generally **peaceful condition of Ireland** continued through the summer. Messrs. Dillon and O'Brien busied themselves at intervals in seeking to hold meetings, especially in Tipperary, but were in most cases prevented by the police. In the latter part of August the official report on the **condition of the potato crop** announced that the blight had appeared and that in some districts the crop was a total failure. At the same time the Nationalist leaders began to call for provision against impending famine and to use the crop failure as an argument against the payment of rents. There followed a general revival of the agitation against the landlords, which had flagged greatly. No action was taken by the government till September 18, when suddenly and unexpectedly Messrs. Dillon and O'Brien, with a number of less conspicuous leaders of the National League, were arrested. The charge against the prisoners was conspiracy to prevent the payment of rents to Mr. Smith-Barry, the now famous Tipperary landlord. The trials began at Tipperary, September 25, before the resident magistrates. On the day of the opening a *mêlée* occurred at the door of the court-house, in which a number of people were clubbed by the police. Mr. John Morley, who was present, has since denounced the action of the police as wholly unnecessary and as brutal in the extreme. The defendants on trial at first made a fruitless effort to change the magistrate presiding, on the ground of bias. Proceedings then degenerated into a prolonged wrangle between prisoners, counsel and the court. On October 10, while the trial was still in progress, Messrs. Dillon and O'Brien



disappeared and after a few days arrived in France, whence they sailed later for America. The events at Tipperary gave a great stimulus to the activity of the National League, and on October 6 a conference of the Irish Parliamentary Party met at Dublin on the call of Mr. Parnell. Resolutions were adopted promising support to suffering tenants, calling upon the government to take measures for the relief of the distressed districts, denouncing the arrests of the Nationalist leaders and appealing to the friends of Ireland, especially in America, for subscriptions to assist the people in their distress. A committee was appointed to visit America and lay the Irish situation before the people. It was as members of this committee that Messrs. Dillon and O'Brien forfeited their bail and left the country as stated above. — The Irish Secretary, Mr. Balfour, spent the last week of October in travelling through the distressed districts in the west of Ireland and pushing the construction of railroads and other public works designed to give employment to the people. — **Died**: June 28, Lord Carnarvon, the Conservative statesman; October 12, James E. Thorold Rogers, the economist.

**THE BRITISH COLONIES.** — **The Canadian Parliament** was prorogued May 16. Its work included a readjustment of the tariff, a new banking act, numerous amendments to the criminal law and the creation of a bureau of labor statistics. The Dominion government proclaimed by an order in council, October 14, the abolition of the export duty on logs destined to the United States. This brought into operation the lower rates on lumber in the McKinley bill, which were made applicable only to the products of countries that imposed no export duty. **The Ontario elections** in June resulted in a Liberal victory, the chief issue being the maintenance of separate schools for Catholics, to which the Conservatives were opposed. In **Manitoba** the abolition of the separate schools was enacted by the legislature at the last session, and in September a numerous signed memorial was presented to the governor-general by the Catholics of the province, praying that he disallow both this act and the act abolishing French as an official language. On October 28 the government announced that it would not interfere, but would leave the question of constitutionality to the courts. — **The discontent in Newfoundland** at the British government's action in the fisheries matter continued to be acute through the season. A very vigorously, if not impertinently, worded protest against the *modus vivendi* was addressed to the Queen by the colonial legislature in May. In the latter part of that month indignation blazed especially high at the action of a French naval officer in destroying the nets of some British subjects found fishing on the French shore. Later in the season a lobster-canning establishment was set up on that shore by a Newfoundlander, and the owner defied the British commander's orders to close it. Upon the occupation of the place by marines, the owner brought suit against the commander for damages, and was sustained in this course by public sentiment in the island.

**GERMANY.** — **The Emperor** has continued to impress his vigorous personality upon the affairs both of Germany and of Europe in general. He is understood to have taken an active personal part in the negotiations with England about Africa. In the latter part of June he started on a tour which included the Danish and Norwegian capitals. Returning for a short time to Ger-

many, he continued his travels in August, visiting King Leopold of Belgium at Ostend and Queen Victoria at Osborne, and then proceeding to St. Petersburg for a conference with the Czar and for attendance upon the Russian military manœuvres. His stay in Russia was characterized by protracted interviews with the Czar and M. Giers, in which Chancellor Caprivi took part. In September the Emperor entertained Francis Joseph of Austria at Rohnstock during the German manœuvres, and Caprivi and Kalnoky were in conference on this occasion. The two Emperors then in early October spent some time together in Austria. — **The new Reichstag** opened its session May 6. The Emperor's address devoted especial attention to the need of further legislation for the protection of the workingmen. Several bills were promised on the general lines recommended by the labor conference in March. The speech expressed confidence in the maintenance of peace by the Triple Alliance, but declared the necessity of a further strengthening of the army, especially the artillery, and announced a bill for that purpose. Chancellor Caprivi made his first address to the Reichstag in his official capacity May 12. The subject was Germany's colonial policy, and the Chancellor made an excellent impression on all parties. The army bill was taken up May 14. It provided for adding 18,000 men and 70 batteries to the peace effective, entailing a permanent addition of 18,000,000 marks to the budget. The government intimated distinctly in debate that this was but the beginning of a wide-reaching reorganization of the army, involving an expense that could not yet be estimated. This announcement gave a little life to the opposition that had hitherto languished; but after a vain attempt to get the concession of a two-year term of service and a firm legislative control of the army, Herr Windthorst led the bulk of the Centrists over to the government's support and the bill passed without amendment. Without having undertaken any other business of importance, the Reichstag was prorogued, July 2. — **The Anti-Socialist Law**, after having been in force 12 years, expired by limitation September 30. The socialists throughout the empire celebrated the relaxation of their bonds with much enthusiasm but without disorder. The unwonted privilege of unrestricted discussion of their views both by voice and by pen was utilized to the utmost. Their old "programme," adopted at Gotha in 1875, the publication of which was prohibited by the now obsolete law, has been revived by their press. In the middle of October a congress of the Socialists met at Halle and in a session of several days perfected plans of organization and propaganda. In the play of internal factions in the party the older and more conservative leaders triumphed over the more radical and revolutionary element. — Much attention throughout the world was attracted during the early summer to a series of **interviews with Bismarck** which appeared in various journals of Germany, France, England and Russia. The general tone of the Prince's remarks was that of petulance and extreme irritation at his position. Some of the reports contained statements and comments touching recent international relations which were of a character to excite alarm in diplomatic circles. It was rumored that the Emperor was obliged to explain formally to Austria and other powers that Bismarck's utterances had no more significance than those of any other private citizen. The Prince's view of the Anglo-German treaty was unfavorable, and other



features of his successor's policy were forcibly assailed in his remarks as reported, though in several instances he denied the accuracy of the reports. No important interviews have appeared since the end of July, but it is understood that a Hamburg paper (the *Nachrichten*) has assumed the function of expressing Bismarck's opinions.

**FRANCE.** — The current of politics has been wholly unruffled by sensational events. **The Chambers** passed the early summer in routine business. A grand committee appointed in the spring, under the presidency of M. Meline, busied itself all through the summer with the elaboration of a tariff system to take the place of the treaties soon to expire. The composition of the committee is strongly protectionist. That the legislature tends toward the same sentiment was shown by the passage in July of a bill imposing a duty of three francs on corn, with the avowed purpose of aiding French agriculture. Upon the reassembling of the Chambers, October 20, after the summer vacation, the government submitted a tariff bill. It provides for a maximum tariff on agricultural products, which, as coming from countries not disposed to favor France, shall not be subject to treaty, and on about a thousand other articles both a minimum and a maximum duty, according as they shall or shall not be subject to treaty arrangements. The raw materials of the most important industries, like wool, cotton, flax and hides, are free. — President Carnot has travelled extensively through the country and has been greeted everywhere with manifestations of popular esteem. He took occasion of his presence near the prison of Clairvaux to issue the expected **pardon of the Duke of Orleans**, June 3. The young man was conducted to the Swiss frontier and liberated. — **The inner springs of the Boulangist movement** were exposed in September through a series of revelations in *Le Figaro*, by one who was familiar with all the details. It was shown that the financial support of the movement came largely from the monarchic party, with the approval of the Count of Paris. The Duchesse d'Uzès alone advanced 3,000,000 fr., with the understanding that it was to be made good at the restoration of the monarchy. The whole tenor of the revelations was to exhibit Boulanger as an exceedingly weak and contemptible character, whose worthlessness the Royalists understood, but whose popularity with the Radicals they were willing to use for their own ends. Much surprise was manifested at the revelation that the Count of Paris had countenanced the scheme, even to the extent of personal consultation with the general. The count explained his position in a published letter, saying: "Proscribed by the republic, I take up, in order to fight it, the arms with which it supplies me. I do not regret having made use of them to divide the Republicans." Boulanger's leading Radical adherents have all deserted him, and most of them have recorded their contempt for him personally, justifying it by numerous anecdotes of his cowardice and incompetence when his cause promised success.

**AUSTRIA-HUNGARY.** — The session of the **Delegations** in June passed without important incident. Count Kalnoky's address gave a favorable outlook for peace in foreign relations. The budget showed a small increase in the military item. — **The race conflict in Bohemia** appeared with its old violence in the Diet which met at Prague May 20. The business before the

Diet was to carry out in details the scheme of compromise between Germans and Czechs, mentioned in the last RECORD. Violent opposition by the dissatisfied Young Czechs, who refused to be bound by the compromise, brought the enforcement of the plan practically to a standstill. The conservative part of the Czechs were overpowered by the younger members of the party and the final settlement of the matter is still undecided, pending an appeal to Count Taaffe to preserve the language of the Czechs as the official language of Bohemia. — The communal and municipal elections in Austria proper have revealed great strength in the anti-Semitic ideas which are prevalent in those regions. Many instances of extreme bigotry and intolerance have attracted attention.

**ITALY.** — Crispi's position at the head of the government has been firmly maintained, though it was supposed in some circles that Bismarck's retirement, as well as the condition of internal politics, rendered it very insecure. An attempt of the Senate, May 5, to interfere by amendment with the government's measure in reference to the *opere pie* was met and thwarted by a threat of dissolution and appeal to the country. Violent attacks on the policy of the government both in respect to the Triple Alliance and the internal administration were met by an overwhelming vote of confidence in the lower house, May 31. It was clear, however, that the military and naval expenses incidental to the alliance were embarrassing the government and burdening the people very greatly. — Some comment was caused by the action of the Pope, in July, in leaving the Vatican to visit an artist's studio in Rome. This unusual proceeding gave rise to rumors that the semblance of imprisonment would cease to be the papal policy; but nothing has happened since to confirm the rumors. — The date of the general elections is approaching, and Crispi delivered an address at Florence, October 8, which was in some sort a basis for the campaign. It was devoted mainly to a defence of Italy's connection with the Triple Alliance and to a vigorous attack on the Irredentists as seeking to destroy that connection.

**SPAIN.** — The downfall of Sagasta's ministry occurred July 5, wholly unexpected by anybody. The government had carried its suffrage bill and other measures and had triumphed against several direct attacks of the Conservatives. An adverse motion by a discontented Liberal, however, just as the Cortes were about to adjourn for the summer, led Sagasta to offer his resignation, which the Regent promptly and unexpectedly accepted. Canovas del Castillo, the Conservative leader, though supported by only a small minority in the Cortes, formed a cabinet and assumed the government immediately. All parties have since been preparing for the general elections now near at hand. The Republican party, under Salmeron, have perfected a new organization with a platform that distinguishes them from revolutionists of the Zorilla type, while at the same time not permitting of union with the Liberals led by Sagasta and Castelar. The Conservatives hold forth a programme of protection and labor legislation.

**RUSSIA.** — A nihilist plot against the life of the Czar was unearthed early in June. Dynamite was reported to have been found in a cellar of the palace. A group of Nihilists in Paris was ferreted out as connected with the affair, and several of its members were prosecuted and punished by the French

government. — A law putting the now customary restrictions upon the labor of women and children was published June 21. — A series of new **repressive edicts against the Jews** was reported in the *London Times* and other European papers about the first of August, and excited much indignation throughout Western Europe and America. The new regulations were said to prohibit the Jews (1) to reside anywhere but in towns and to own or to farm land; (2) to reside in any but sixteen designated provinces in the western border of the empire; (3) to be connected in any way with the mining industry; (4) to constitute more than five per cent of the students in schools, gymnasia or universities; (5) to practise law without the special sanction of the minister of the Interior, which it is understood is not to be given; (6) to follow the profession of engineer or of army doctor or to fill any government post whatever. Some of these rules are admitted to be old, but the novelty is to consist in their rigorous enforcement.

**MINOR EUROPEAN STATES.** — In Portugal the bad feeling against England displayed itself in violent opposition both within and without the Cortes to the treaty concluded in reference to African possessions. The Pimental cabinet was forced to resign September 17 and great confusion prevailed for several weeks. Not till October 11 did a new cabinet assume office, headed by General Chrysostomo. The Cortes was prorogued on the 15th. — **The Porte** has been called upon to deal with a prolonged and earnest agitation among its Armenian subjects. Moussa Bey, one of their oppressors, whose acquittal created widespread scandal, was ultimately rearrested and banished to Medina in September. A report that the Armenians were arming themselves, as the impositions of the Turks and Kurds seemed to justify them in doing, caused a dispersal of a meeting in Erzeroum, June 20, by the soldiery, followed by a general attack on the Armenian population in which many lives were lost. For manifesting too little energy in demanding satisfaction from the Porte, the Armenian patriarch in Constantinople was mobbed by his countrymen, July 28. These events, with representations from some of the European powers, led to commissions of inquiry and to some propositions for reform in the administration in Armenia, but without result as yet. The concession of special privileges to the Bulgarian church in Macedonia stimulated persistent demands for reform in the relations of the government with the Greek church. It was claimed that the rights of local administration long conceded to the Christian ecclesiastical authorities had been reduced to a dead letter by the Turkish officials. In the middle of October the Ecumenical Patriarch at Constantinople put an interdict on Greek worship in Macedonia, and shortly after the Sultan came to terms and granted most of the Christians' demands. — **The elections in Servia**, September 29, resulted in a sweeping victory for the Radicals, now in power. The presence of ex-King Milan in the country and his evident popularity with the army caused some uneasiness in governmental circles, but nothing resulted. — In Bulgaria, the trial of Major Panitza and fourteen associates for conspiracy against Prince Ferdinand lasted from the 15th to the 30th of May. The leader and three others were convicted and the former was executed June 29. The general elections for the Sobranje in September resulted in an overwhelming victory for the government, attributable in some measure probably to M.

Stambouloff's successful foreign policy. — A revolution broke out September 11 in the canton of Ticino, **Switzerland**. A Liberal faction forcibly overthrew the Ultramontane government, but was itself obliged to give way to a representative of the federal authorities, who intervened to restore order. A vote in the canton on the question of revising the constitution resulted in a victory for the Liberals, but only by a majority of 100 in 24,000 votes. With opinion so evenly divided, the federal authorities restored the conservative government, but with a strong federal control, and then brought about a conference of the parties to reconcile their differences. — **The Danish legislature** assembled October 6, with an increased opposition majority to criticize the ministry, who will be called upon to explain a deficit of 4,500,000 crowns. — **The King of the Netherlands**, who has been ill for years, is now reported to be insane. On the 29th of October, a vote of the Parliament declared him incapable of governing and invested the council of state with royal powers. — **The Greek ministry** of M. Tricoupis resigned, after a four years' lease of power, on the 28th of October. It was succeeded by a cabinet under the presidency of M. Delyannis.

**AFRICA.** — The general features of the territorial adjustment effected by the various treaties mentioned above are as follows: The "hinterland" doctrine of the Germans, namely, that possession of the coast gave a claim to continuous territory inland to an indefinite extent, was recognized as a basis for the work of delimitation. To Germany was assigned a region lying back of her coast near Zanzibar, and reaching to the eastern boundary of the Congo State. This tract includes half of Victoria Nyanza, the whole east shore of Lake Tanganyika and the northeastern shore of Lake Nyassa. Zanzibar itself and the whole eastern coast of the continent north of the German territory were left to Great Britain, with interior regions reaching westward to the Congo State and northward to the Soudan and Abyssinia. The conquest of the Mahdi's realm will thus make British influence continuous from the Mediterranean up the Nile and across to Victoria Nyanza. The long-cherished English project of maintaining this continuity southward to the Cape possessions was abandoned in yielding to the Germans their "hinterland" as above described; but some compensation was found in a provision for freedom of transit across this territory. By the Anglo-Portuguese agreement, as negotiated, the possessions of Portugal in the east were limited to a comparatively narrow strip with a long coast-line, reaching from the German boundary to the British possessions about the Cape. The Portuguese claim to "hinterland" that would connect with their possessions on the west coast was nullified by the recognition of a vast interior region to England. Portugal obtained the right to build railways across this tract, but on the other hand conceded the free navigation of the Zambesi, whose upper course is entirely in English hands. On the southwest coast of the continent no important changes were made; boundaries were merely determined with the greater exactness made possible by better geographical knowledge. In the northwest, the French claim to "hinterland" resulted in the delimitation of the region south of her Mediterranean possessions where it comes in contact with British interests on the Niger. The exact line of demarcation was left to be fixed by commissioners, but the agreement in general recognizes to France

undisputed sway in the vast region bounded by the Mediterranean, the Atlantic and the upper Niger, and extending eastward to Tripoli and Lake Chad. — Important action was taken in July in Belgium with reference to the **Congo State**. By an agreement negotiated between Belgium and King Leopold, as sovereign of the Congo State, the former undertakes to advance to the latter during the next ten years \$5,000,000 without interest. At the end of the period, Belgium is authorized, if she so wishes, formally to annex the Congo State. King Leopold renounces all claims to recompense for outlays incurred in the administration and provides by a testament that all his sovereign rights on the Congo shall go to Belgium at his death if they have not been assumed before. — The hostilities between the French and the King of Dahomey were terminated by a treaty of peace in October.

**SOUTH AMERICA.** — Interest has centred during the last six months upon the state of affairs in **Argentina**. The financial difficulties mentioned in the last RECORD grew constantly more serious and the condition of the treasury excited widespread uneasiness both at home and abroad. Excessive issues of paper money and of *cedulas* (mortgage bonds on land, guaranteed by the government) gave rise to grave charges of corruption against President Celman and his friends. Early in May the finance minister, Senor Uriburu, resigned because the President declined to take steps for the removal and punishment of the bank officials who were deemed responsible for certain illegal issues. This event increased the distrust in the government, and on July 26 the discontent culminated in a revolution in the capital, managed by an organization known as the Union Civica. For several days Buenos Ayres was the scene of hard fighting, part of the army and navy having joined the insurgents; but finally, before any decisive result had been reached, negotiations supervened and hostilities ceased. Amnesty was granted to the insurgents and on August 5 Celman resigned his office. The Vice-President, Pelligrini, immediately assumed the executive power and with a reorganized cabinet soon succeeded in restoring public confidence and order. The rejoicings at the downfall of Celman were excessive. Measures looking to an entire readjustment of the public finances have been under consideration by the cabinet and the legislature ever since. It is said that millions have been taken from the treasury by Celman and his friends. Some dissatisfaction is still felt at the presence of some of Celman's supporters in the reorganized cabinet. — **Uruguay** experienced in July a financial crisis springing from causes similar to those at work in the Argentine. Paper money and dubious administration of the national bank, connived at by the President, seem to have brought the disaster. No insurrectionary movement, however, was reported. — **The new constitution in Brazil** was promulgated by the provisional government June 23, it having been previously announced that the work of the constituent assembly should be merely that of ratification. In its main features the new instrument follows that of the United States. It provides for a President responsible to the nation only, with heads of departments responsible exclusively to him. There is a bicameral legislature, with terms of three and nine years respectively. The presidential term is six years, with ineligibility for ten years succeeding. The election of President is indirect through electors in each of the states, with devolution on the

legislature in case no candidate obtains an absolute majority. The election for members of the constituent assembly took place September 15. There was no organized opposition to the candidates presented by the government and few other than these were returned. — Peru inaugurated a new President, Remigio Morales, August 10. Work on the great contract of the foreign bondholders is progressing steadily. — The Panama Canal has been the subject of a negotiation between Lieutenant Wyse and the Columbian government, looking to resumption of work on the enterprise. An extension of the concession for ten years was agreed to by the government, but some trouble has been found in getting the ratification of the congress at Bogota. The report of the special commission sent out by the French receiver of the defunct company estimated eight years and \$18,000,000 as necessary to complete the canal. It further expressed the opinion that the completion is possible only on the basis of an international agreement among the states interested.

**CENTRAL AMERICA.** — A revolution in San Salvador, June 22, resulted in the death of President Menendez and the assumption of power by General Ezeta, the leader of the insurgents. Ezeta immediately announced his opposition to the plan of union with the other Central American republics [see last RECORD], on the ground that it was merely a scheme for the enslavement of the other states by Guatemala. The latter government thereupon declared war against Ezeta, and hostilities were carried on during July and most of August, with results not unfavorable to the Salvador forces. Honduras showed evidence of an inclination to side with Guatemala, but Nicaragua and Costa Rica undertook the task of mediation. In the middle of August, through the action of the whole diplomatic corps in the struggling countries, a basis of peace was arranged, by which Ezeta was recognized as provisional President in San Salvador. The general effect on the plan of union is very unfavorable. The first diet of the union was to meet September 15, and it was expected that by that time Costa Rica and Nicaragua would have given in their adherence to the scheme, as the other three states had done. But with Ezeta in power, San Salvador's ratification of the project was practically withdrawn, and Costa Rica and Nicaragua at length resolved in July to put off final action on their part till 1891. As the plan was only to go into operation when a majority of the five states acceded to it, it is now at a standstill.

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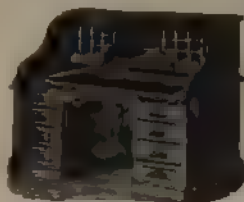
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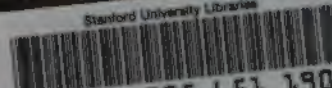
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